

Kentucky Department of Public Advocacy's

33rd Annual Public Defender Education Conference

June 7-9, 2005

**The Galt House
Louisville, Kentucky**



Small Steps Forward

*I believe that each era finds an improvement in law.
Each year brings something new for the benefit of mankind.
Maybe this will be one of those small steps forward ...*

- Clarence Earl Gideon

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FILLING OUT THE CLE CARD FOR KENTUCKY:

SPONSER:	KY DEPT. OF PUBLIC ADVOCACY
ACTIVITY:	33rd ANNUAL PUBLIC DEFENDER CONFERENCE
LOCATION:	LOUISVILLE, KY
DATE:	06/07/2005
ACTIVITY:	76665
TOTAL CLE CREDITS:	12.50
ETHICS:	9.0 HOURS (MAXIMUM AVAILABLE)

**IF YOU ONLY ATTENDED FROM 2:00 P.M. ON TUESDAY UNTIL 5:15 P.M. ON WEDNESDAY,
YOU MAY CLAIM 9.50 HOURS OF CLE CREDITS.**

ETHICS CREDITS ARE INCLUDED IN THE TOTAL NUMBER OF CREDITS

General Conference Information

MESSAGE/GENERAL INFORMATION CENTER: You will be able to receive any messages at the DPA Registration Desk starting Tuesday at 1:00 p.m. through the remainder of the Conference. A message board will be stationed at the registration area. In case of an emergency, we will look for you in the meeting rooms. Any changes in the conference program will be posted at the DPA Registration Desk and in the lobby. The telephone number at the hotel is (502) 589-5200. The fax number is (502) 589-3444.

SMOKING POLICY: There will be no smoking in any of the meeting rooms or lobbies. You will only be able to smoke outside the building.

FAMILY: If you are bringing your family, they are welcome to drop in on any or all of the Conference programs if they're interested. If you have small children who would disrupt any of the learning, we ask that you not bring them to any Conference program.

MEALS FOR YOU & YOUR FAMILY: Your registration includes breakfast and lunch on Wednesday, and breakfast on Thursday. Please see the DPA Registration Desk for individual meal prices if you wish to purchase meal tickets for your family.

EVALUATIONS: You will be given an evaluation form for each individual session each day. Please complete the evaluation form and return to the DPA staff person at the end of each session. We need your evaluative thoughts.

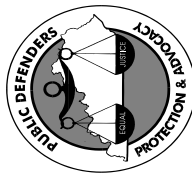
SOCIAL GATHERINGS: Tuesday evening there will be dinner in the Cochran Room at 6:30 p.m. The presentations of the *Gideon, Nelson Mandela Lifetime Achievement, Rosa Parks, In Re Gault, Anthony Lewis Media, Public Advocate and Furman* Awards followed by remarks from **Ernie Lewis**, Public Advocate; and **David B. Sloan**, KBA President-Elect. Your family is welcome. If your family would like to eat this meal, please purchase tickets at the DPA Registration Desk by 5:00 p.m. There will be a cash bar available starting at 6:00 p.m. in the Lobby Area outside of the Cochran Room.

CLE CREDITS: There are a total of 12.50 KBA CLE credits available, including 9 hours of KBA CLE Legal Ethics credits offered throughout the Conference to choose from. You received your CLE form during registration, please return the completed form to the DPA Registration Desk before Noon on Thursday. Kentucky uses IBM cards for reporting CLE credits (**the Activity Number for this event is 76665**). You need to know your Bar Number. If you do not know your number, ask at the DPA Registration Desk and they can give it to you. There will also be out-of-state CLE forms available at the Registration Desk for Tennessee, Ohio, and Indiana. If the CLE card is not given to the KBA within 30 days of the CLE activity, the only way they will accept it is if it is accompanied by \$10.00 per card. Conference attendees are responsible for that \$10.00 if the card is not given to Lisa Blevins by the 25th day after the Conference. See SCR 3.665(5)(e).

KBA CONVENTION: KBA's convention is held at the Kentucky International Convention Center on Fourth Street (between Market and Jefferson). It is a block from the Galt House. DPA has paid for 200 of our attorneys to attend KBA's convention all day Thursday.

**We can end the existing denial of justice to the poor if we can secure an administration
of justice which shall be accessible to every person no matter how humble.**

- Reginald Heber Smith, *Justice and the Poor* (1919) page 257



33RD ANNUAL KENTUCKY PUBLIC DEFENDER EDUCATION CONFERENCE

Galt House, Louisville, Kentucky
June 7-9, 2005

TUESDAY, JUNE 7, 2005

12:00 p.m. - 4:00 p.m.

CONFERENCE REGISTRATION (Registration booth is located in the lobby area of the Cochran / Archibald Rooms.)
Check-in to Hotel
3:00 p.m.

ANNUAL '05	Archibald	Willow	Holly	Dogwood	Walnut	Magnolia	Maple	Daisy 2 nd Floor	Sunflower 2 nd Floor
1:00-1:45 p.m.	<p>Welcome –</p> <ul style="list-style-type: none"> - Judge Cleve Gambill, Deputy Secretary Justice Cabinet <p>The State of Kentucky Public Defense - Public Advocate, Ernie Lewis</p> <p>New Legislation - Public Advocate, Ernie Lewis</p>	-				11:00 a.m. Juvenile Branch Meeting Magnolia Room			
15 minute break									
2:00 - 4:00 p.m.	<p>The Defense Team: Defining Roles, Meeting Ethical Guidelines and Providing Zealous Representation *</p> <ul style="list-style-type: none"> - Diana Queen - Sharon Travis - Paul Flinker - Jay Barrett - Margaret Case <p>ETHICS</p>	<p>DUI Cases and Practical Tips Litigating Scientific Issues</p> <ul style="list-style-type: none"> - Will Zevely - Jerry Cox 	<p>Addiction Treatment: What Attorneys Need to Know to Advise Their Clients</p> <ul style="list-style-type: none"> - Robert Walker 	<p>Ethical Issues for Appellate Practice *</p> <ul style="list-style-type: none"> - J. Frank Burnette - Damon Preston <p>ETHICS</p>					
15 minute break									
4:15 - 5:15 p.m.	<p>DUI Update</p> <ul style="list-style-type: none"> - Rob Riley 	<p>Technology in the Courtroom</p> <ul style="list-style-type: none"> - Colette Tvedt 	<p>Obtaining and Understanding Medical Records</p> <ul style="list-style-type: none"> - Debbie Davis 	<p>Conditional Release</p> <ul style="list-style-type: none"> - Charlotte McPherson - Scott Gamble 	<p>Juvenile "Hot Issues"</p> <ul style="list-style-type: none"> - Gail Robinson - Tim Arnold 	<p>Commission Meeting</p>	<p>Personal Safety for Public Defenders and Staff</p> <ul style="list-style-type: none"> - Ed Hoskins - Melanie Lowe <p>ETHICS</p>		
6:00 - RECEPTION WITH CASH BAR IN LOBBY AREA OF COCHRAN ROOM									
6:30 - ANNUAL DEFENDER AWARDS BANQUET - COCHRAN ROOM									

WEDNESDAY, JUNE 8, 2005

7:00 – 8:15 a.m. – Buffet Breakfast available in Cochran Room

ANNUAL '05	Archibald	Willow	Holly	Dogwood	Walnut	Magnolia	Maple	Daisy <u>2nd Floor</u>	Sunflower <u>2nd Floor</u>
8:30 – 10:00 a.m.	Sex Offense Charges: Cross Examining the Child Witness - Colette Tvedt	Jury Dynamics - Sunwolf	Race /psa Loquitur: The Wheel of Misfortune - Lisa Clare - Chris Woodall - Don Morehead	Avoiding Bar Complaints* - Bill Robinson - Rebecca Dilorito <u>ETHICS</u>	Life in the Balance Reporting		Westlaw (Beginning) - - Susan Reale	KY Rules of Criminal Procedure - J. David Niehaus	Mental Health Testing and Addiction - Eric Drogin
15 minute break									
10:15– 11:45 a.m.	Child Sexual Abuse: What Attorneys Should Know - Dr. Robert Paschall	Crystal Meth Defense - Scott West - Rick Neal	Eyewitness Identification – What You Need To Know About The Science And Kentucky Caselaw - Glenn McClister	Working with Interns and Volunteers* - Marguerite Thomas - Diana Queen <u>ETHICS</u>	Reversals in the 21 st Century - Tim Arnold - John Palombi	Competency Hearings - Jennifer Hall - Lynda Campbell	Westlaw (Advanced) - Susan Reale	Dealing with Hearsay in a Post Crawford World - Damon Preston - Randy Wheeler	KHEAA Loan Assistance for Public Defenders - Meredith Robinson
Lunch (Cochran Room)									
1:00 – 2:30 p.m.	Litigating Eyewitness Identification Cases - Colette Tvedt	Medical Examiner 101 - George Nichols - Rob Riley	Immigration and Criminal Law - Cori Hash	Meth Investigation - Mike Parks - Roger Gibbs	Post Conviction Mental Health Issues - Eric Drogin	Mentoring- An Orientation for Potential New DPA Mentors - Margaret Case <u>ETHICS</u>	Westlaw (Beginning) - Susan Reale	Case Review with Dr. Robert Paschall	KHEAA Loan Assistance for Public Defenders - Meredith Robinson
15 minute break									
2:45 – 4:15 p.m.	Storyed Persuasion, Divided Attention, and the Juror Listening Dilemma - Sunwolf	Recent Developments in Appellate Courts - Damon Preston - Linda Horsman	Difficult Clients - La Mer Kyle-Reno	Arson Investigation - Mike Parks	Substance Abuse Treatment Programs in Kentucky - Karyn Hascall	Mentoring - A Dialogue Opportunity for Potential New DPA Mentors and Protégés - Margaret Case <u>ETHICS</u>			Drug Courts - John Delaney - Rob Riley - Lynda Campbell
4:20 – 4:45 p.m.	Closing - Ernie Lewis								
		New Staff: Opportunity to Meet the Public Advocate Dogwood Room 5:00 – 5:45 pm			Law Clerk and Intern Orientation with LOPS Walnut Room 5:00 – 5:45 pm				

K These programs qualify for KBA CLE ETHICS credits. KBA has approved this conference for a total of 12.50 credits, including up to 9 hours of Ethics. The Activity Number is 76665.

Thursday, June 9, 2005

7:00 – 8:15 a.m. – Buffet Breakfast available in Cochran Room

ANNUAL '03	Archibald	Willow	Holly	Dogwood	Walnut	Magnolia	Maple	Daisy
8:30 a.m. - 10:00 a.m.				Clandestine Meth Labs - James Asquito				2 nd Floor
15 min Break								
10:15 a.m. – 11:45 a.m.								

To determine your KBA CLE credits, divide the number of minutes of programs you attend which qualify for CLE credits by 60 minutes.

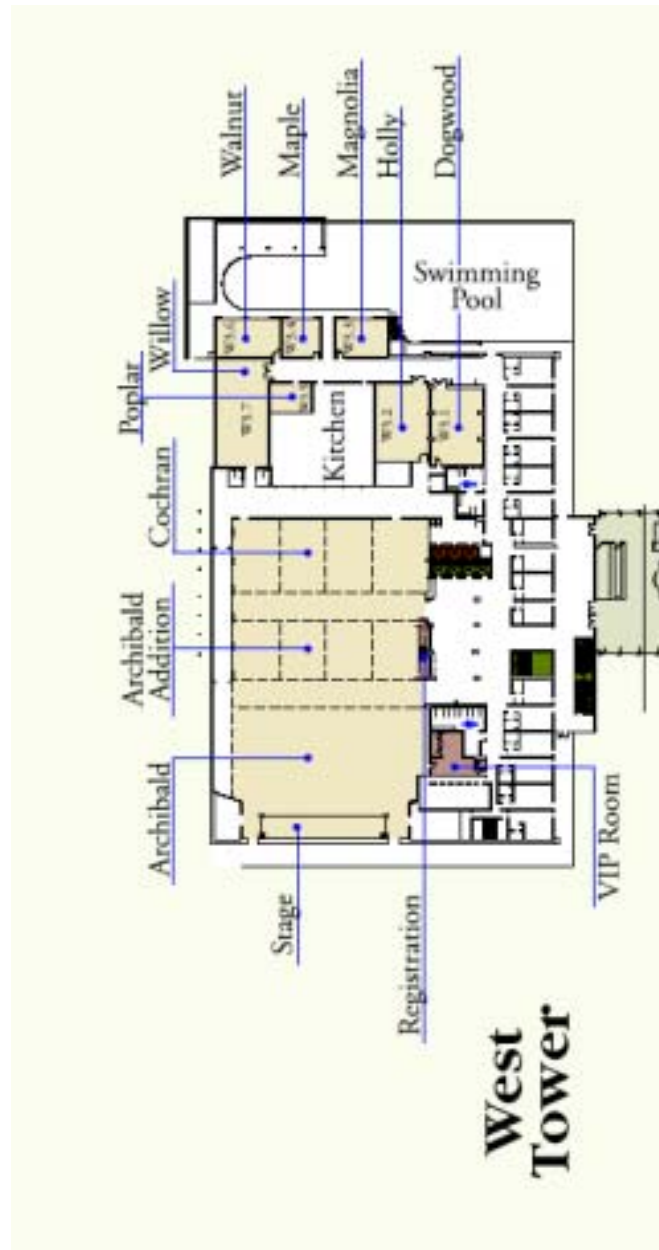
Tuesday, June 7 (210 total minutes) = 3.5 CLE hours
Wednesday, June 8 (360 minutes) = 6.0 CLE hours
Thursday, June 9 (180 minutes) = 3.0 CLE hours

Information for the KBA CLE card:

Sponsor:	Ky Dept. of Public Advocacy
Activity:	33rd Annual Public Defender Conference
Location:	Louisville, KY
Date:	06/07/05
Activity Number:	76665
Total Credits:	12.50 (9.50 Hours if you only attended Tuesday and Wednesday)
Ethics Credits:	9.00 (maximum available)

(Ethics credits are INCLUDED in the TOTAL number of credits.)

Conference Meeting Area Map



ETHICS OPPORTUNITIES AT THE 2005 DPA ANNUAL CONFERENCE

DPA'S Ethics at the Galt House

Tuesday, June 7, 2005

2:00 - 4:00 p.m.
Archibald

The Defense Team: Defining Roles, Meeting Ethical Guidelines and Providing Zealous Representation

2:00 - 4:00 p.m.
Dogwood

Ethical Issues for Appellate Practice

4:15 - 5:15 p.m.
Maple

Personal Safety for Public Defenders and Staff

Wednesday, June 8, 2005

8:30 - 10:00 a.m.
Dogwood

Avoiding Bar Complaints

10:15 - 11:45 a.m.
Dogwood

Working with Interns and Volunteers

1:00 - 2:30 p.m.
Magnolia

Mentoring: An Orientation for Potential New DPA Mentors

2:45 - 4:15 p.m.
Magnolia

Mentoring: A Dialogue Opportunity for Potential New DPA Mentors and Protégés

KBA'S ETHICS AT THE KENTUCKY INTERNATIONAL CONVENTION CENTER

Thursday, June 9, 2005

8:30 - 10:30

How to Avoid Non-Meritorious Ethics Complaints while Simultaneously Increasing Income

8:30 - 11:45

Alternate Dispute Resolution: Thinking Outside the Courthouse

9:45 - 11:45

Trials and Tribulations: Ethical Guideposts on Surviving the Practice of Law and Your Life as a Lawyer

2:00 - 3:00

Federal Regulation of the Legal Profession

Presentation Summary

A listing of our presentations and a description of the learning objectives for each session follows.

Meeting rooms are indicated in the left-hand column in italics under session times.

TUESDAY, JUNE 7, 2005

TIME / ROOM

TOPIC / SPEAKER(S) / LEARNING OBJECTIVES

1:00 - 1:45 p.m.

Archibald
CLE .50

Welcome

– C. Cleveland Gambill, Deputy Secretary, Justice Cabinet

The State of Kentucky Public Defense and New Legislation

- Public Advocate, Ernie Lewis

Objectives: A review of the last year's significant events that affect the state-wide public defender program in Kentucky and its assistance to over 100,000 clients.

2:00 - 4:00 p.m.

Archibald
CLE 2.00
Ethics

The Defense Team: Defining Roles, Meeting Ethical Guidelines and Providing Zealous Representation

- Diana Queen, Investigator, *Kentucky Innocence Project*
- Sharon Travis, Investigator, Hopkinsville
- Paul Flinker, Investigator, Boone Co.
- Jay Barrett, Trial Division Director
- Margaret Case, Staff Attorney, Education and Strategic Planning Branch

Objectives:

1. To explore difficulties that can arise between & among defense team members
2. To teach the proper roles to be played by attorneys and by the individuals in other positions on the team
3. To discuss how best to use scarce staff time, energy, and expertise, in the "preparation reasonably necessary for the representation", (KRPC 1.1), with the necessary diligence, (KRPC 1.3)
4. To sensitize defender staff to the dangers of non-lawyers engaging in the unauthorized practice of law, (KRPC 5.5), or engaging in unethical activity, (KRPC 5.3)
5. To address differences of opinion on whether, and to what extent, an attorney may or should have other team members handle client communications, (KRPC 1.4).

2:00 - 4:00 p.m.

Willow
CLE 2.00

DUI Cases and Practical Tips Litigation Scientific Issues

- Will Zevely, *Busald, Funk and Zevely*, Florence, KY
- Jerry Cox, *Clontz & Cox*, Mount Vernon, KY

Objectives: An overview of the current "science" used in the prosecution of DUI cases and techniques to challenge this through investigation, pretrial litigation, and trial.

2:00 - 4:00 p.m.

Holly

CLE 2.00

Addiction Treatment:

What Attorneys Need to Know to Advise Their Clients

- Robert Walker, M.S.W., L.C.S.W., University of Kentucky Center on Drug & Alcohol Research

Objectives: This workshop will focus on gaining an understanding of the types of substance abusers and how they may respond to treatment referrals. Attention will be paid to discriminating between drug dealers who misuse substances, drug abusers, and substance dependent persons. The program will also feature a discussion about ways to help clients to be more likely to follow-up with treatment and make constructive use of it. There will be discussion about the role of informed consent to treatment and its relationship to plea bargains and treatment participation or Drug Court participation. Different modalities of treatment will be covered briefly.

2:00 - 4:00 p.m.

Dogwood

CLE 2.00

Ethics

Ethical Issues for Appellate Practice

- J. Frank Burnette, KY Bar Association, Director of Client Assistance
- Damon Preston, Manager, Appeals Branch

Objectives:

This session will be devoted to ethical issues likely to arise in the representation of criminal defendants on appeal. Among the topics to be discussed:

1. How does an attorney respond to a client's desire to raise an issue the attorney believes may be frivolous? (Kentucky Rules of Professional Conduct 3.1)
2. When must an appellate attorney visit his or her client in person as opposed to telephone or written communication? (Rules 1.2, 1.3, 1.4)
3. Can an issue be raised on appeal when the attorney has evidence from outside the record which, if known to the appellate court, would weaken the validity of the argument? (Rule 3.3)
4. How much work can appropriately be delegated to a law clerk in appellate practice? (Rule 5.5)
5. What is the ethical duty on an appellate attorney to advise a client of the potential risks of proceeding with an appeal? (Rules 1.2, 1.4, 2.1)
6. Must an appellate attorney cite to authority directly in opposition to his or her argument? What if authority is only arguably in direct opposition or is from a jurisdiction that is not controlling? (Rule 3.3)
7. How can an appellate attorney monitor his or her own performance to determine if his/her workload is resulting in ethically substandard work product for the client? (Rule 1.1)
8. What are the most common ethical complaints by clients against their appellate attorneys?

4:15 - 5:15 p.m.

Archibald

CLE 1.00

DUI Update

- Rob Riley, Northern Regional Manager and LaGrange Directing Attorney

Objectives: A review of the current state of DUI law and practice. Focus on caselaw from the last year, statutory changes and novel or new ideas to better represent our DUI clients.

4:15 - 5:15 p.m.

Willow

CLE 1.00

Technology in the Courtroom

- Colette Tvedt, Suffolk University Law School, Boston, MA

Objectives: An overview of simple to use strategies for integrating technology, such as PowerPoint, into your litigation practice.

4:15 - 5:15 p.m.

Holly

CLE 1.00

Obtaining and Understanding Medical Records

- Debbie Davis, Attorney, Florence, KY

Objectives:

1. Understand HIPAA.
2. Learn how to obtain medical records.
3. How to process medical records.
4. Using medical records in a criminal case.
5. Suppressing medical records.
6. Sources to help you.

4:15 - 5:15 p.m.

Dogwood

CLE 1.00

Conditional Release

- Charlotte McPherson, AOC, Field Supervisor, Pretrial Services

- Scott Gamble, AOC, Field Supervisor, Pretrial Services

Objectives:

1. To provide a general understanding of Pretrial Services.
2. To provide information concerning a range of services available to the trial courts in Kentucky.

4:15 - 5:15 p.m.

Walnut

CLE 1.00

Juvenile “Hot Issues”

- Gail Robinson, Staff Attorney, Juvenile Branch

- Tim Arnold, Manager, Juvenile Post Dispositional Branch

Objectives:

1. To learn about recent developments in juvenile law.
2. To brainstorm about issues appearing in the local juvenile courts.
3. Collaborate on how best to litigate these issues.

4:15 - 5:15 p.m.

Magnolia

Public Advocacy Commission Meeting

4:15 - 5:15 p.m.

Maple

CLE 1.00

Ethics

Personal Safety for Public Defenders and Staff

- Ed Hoskins, AOC, Pretrial Services, Court Security Unit

- Melanie Lowe, Staff Attorney, LaGrange Trial Office

Objectives:

1. To learn what steps AOC has taken, and is planning for the future, in order to protect the physical safety of those in Kentucky’s criminal justice community.
2. To learn ways in which defender staff can promote their own safety on the job.
3. To explore the extent, if any, to which a defense team member has a duty to disclose client confidences that implicate the safety of any person, including that defense team member himself. (KRPC 1.6)
4. To address whether a defense team member’s personal safety fears or concerns in a particular case can rise to the level of a conflict of interest that prevents effective assistance to the client involved, (KRPC 1.7(b), 1.16(a)(2)); to address how such situations should be handled.
5. To consider the pressures felt by some defender staff families and friends, whose loved ones are engaged in what is viewed as particularly hazardous work.

6:00 p.m. - 6:30 p.m.

Reception (*cash bar*)

Registration Lobby

6:30 p.m.

Annual Defender Awards Banquet

Cochran

Remarks from David B. Sloan, KBA President-Elect and awarding Professionalism an Excellence Award

Presentations of Awards: *Rosa Parks, Nelson Mandela Lifetime Achievement, Gideon, In Re Gault, Anthony Lewis Media, Furman, and Public Advocate Awards*

Wednesday, June 8, 2005

7:00 - 8:15 a.m.

Buffet Breakfast (*included with registration*)

Cochran

8:30 - 10:00 a.m.

Sex Offense Charges: Cross Examining the Child Witness

Archibald

- Colette Tvedt, Suffolk University Law School, Boston, MA

CLE 1.50

Objectives: Techniques to use in sex offense cases including:

1. The Client Interview
2. Understanding child development
3. Selecting the defense
4. The investigation
5. The cross examination

8:30 - 10:00 a.m.

The Bio-Psychology of a Juror's Courtroom Task and the Social Psychology of Group Deliberations: New Appellate Issues, Novel Motions, and Surprising Strategies

Willow

CLE 1.50

Sunwolf, Santa Clara University, Communications Dept., Professor

Objectives:

1. New ways to challenge a juror's competency to serve during voir dire.
2. Strategies and motions to deal with issues of juror stress, divided attention, and the bio-physiological challenges of jury service.
3. Tools to deal with juror and bailiff misconduct issues, revealed in videos of real jurors deliberating.
4. Ways to deal with the effects of *anticipated decisional regret* and counterfactual thinking during deliberations.
5. Techniques to change the way jurors deliberate, redistribute leadership, and reframe closing arguments to set new agendas for deliberations.
6. Increasing knowledge about the inherent unfairnesses in the structures of every trial that are overlooked.

8:30 - 10:00 a.m.

Race *Ipsa Loquitur*: The Wheel of Misfortune

Holly

CLE 1.50

- Lisa Clare, Staff Attorney, Appeals Branch

- Chris Woodall, Staff Attorney, Hopkinsville

- Don Morehead, Staff Attorney, Appeals Branch

Objectives:

1. Demonstrate the effect of encounters with law enforcement and the judicial system on minority individuals and communities;
2. Identify areas of objective bias from selective surveillance of minority communities to disproportionately harsh sentences imposed on minority persons.

3. Identify strategies for addressing systemic racial bias under a 14th Amendment analysis.
4. A review of recent decisions.
5. Strategies for an effective motion practice.
6. Strategies for setting the case up for appeal.

8:30 - 10:00 a.m.

Avoiding Bar Complaints

Dogwood

- Bill Robinson, *Greenebaum, Doll & McDonald*, Covington, KY

CLE 1.50

- Rebecca Ballard DiLoreto, Director, Post Trial Division

Ethics

Objectives:

1. How to prioritize one's work on behalf of clients when the caseload is overwhelming.
2. How to identify when the caseload is too much and when relief must be sought from a court.
3. What are the most common complaints of clients about attorney performance.
4. What habits of practice best protect a lawyer against bar complaints.
5. What ethical duties to clients matter the most when you know you cannot meet all of client's needs effectively.

8:30 - 10:00 a.m.

Life in the Balance Reporting

Walnut

- Dawn Jenkins, Mitigation Specialist, LaGrange Capital Post Conviction

CLE 1.50

- Dennis Burke, Staff Attorney, Capital Post Conviction

- Jim Gibson, Staff Attorney, Capital Trial Branch

- Bette Niemi, Manager, Capital Trial Branch

- Vince Yustas, Staff Attorney, Elizabethtown

Objectives:

When Your Client Wants to Die: Ethical Considerations for Attorneys: To recognize one's ethical obligations when confronted by a client who wants to plead guilty and/or proceed to trial and/or to abandon appeals in order to receive the death penalty.

Substance Abuse and Mitigation by Robert Smith: The data regarding capital offenses indicates that approximately 90% of capital cases involve some level of substance abuse. Unaddressed, substance abuse by itself is often viewed as an aggravator. It is important for the defense team to explain substance abuse, its causes, development and effects in a comprehensive and understandable fashion. Linking substance abuse to significant life events, co-occurring disorders, and genetic influences is critical to assisting the jury in viewing substance abuse as a mitigating factor. It is also imperative to explain the physical, emotional and cognitive impairments caused by various substances used at the time of the offense.

Issues of Malingering in the Determination of Mental Retardation: To gain insight into countering the inevitable government accusation that your mentally retarded client was malingering.

Innovative Motion Practice: An aggressive, creative, evidence-based pretrial motion practice can both improve the fairness of the process and help obtain favorable settlements. Address the hot issues to litigate pretrial and the overall methodology for an effective motion practice.

8:30 - 10:00 a.m.

Westlaw (Beginning)

Maple

CLE 1.50

- Susan Reale, Thomson West, Government Account Manager

Objectives: Learn to make Westlaw your key to legal research. I'll start by showing you how to retrieve a document by citation or case name. Explore two fundamental but powerful search methods: Natural Language and Terms and Connectors. In addition, I will show you KeyCite®, West's essential citation research system. You will also learn MyWestlaw, a way to personalize Westlaw to meet your unique research needs. And you will see how easy it is to keep a record of — and return to — each step in your research project.

8:30 - 10:00 a.m.

The Kentucky Rules of Criminal Procedure: Interesting and Largely Unheeded Guides to Criminal Practice

Daisy

CLE 1.50

- J. David Niehaus, Deputy Appellate Defender, Louisville Metro Public Defender's Office

Objectives: In most circuits, attorneys and judges think it's more important to know "How we do things around here" than to know how the rules of court say things should be done. The premise of this presentation is that defendants often would be better off under the rules.

This presentation will examine the origin and intended operation of the rules governing criminal prosecutions and will examine certain problem areas in criminal practice to see if a rule governs, if that rule has been interpreted correctly, and if the defendant should insist on enforcement of the rule as written.

8:30 - 10:00 a.m.

Mental Health Testing and Addiction

Sunflower

CLE 1.50

- Eric Drogin, J.D., Ph.D., ABPP, Louisville, KY

Objectives: Attendees will learn about the nature and scientific properties of assessment procedures designed to identify and characterize the client's addictive behavior and disorders.

10:15 - 11:45 a.m.

Child Sexual Abuse: What Attorneys Should Know

Archibald

CLE 1.50

- Robert Paschall, MD, FAAP, Medical Director, Child Protection Program Sexual Abuse Management Clinic, St. Louis Children's Hospital

Objectives: From a medical perspective the audience will:

1. Hear how the medical and legal field's perspectives differ.
2. Understand the difference in intentionally false allegations and unintentional false allegations.
3. Learn the attributes of a competent sexual abuse interview.
4. Find out how sexualize and non specific child behaviors relate to sexual abuse.
5. Be given an opportunity to be aware of basic medical terms used in sexual abuse.
6. Be recipients of information regarding the relationship of anatomic physical findings and sexually transmitted disease to sexual abuse.

10:15 - 11:45 a.m.

Crystal Meth Defense

Willow

CLE 1.50

- B. Scott West, Directing Attorney, Murray
- Rick Neal, Staff Attorney, Post Conviction Branch

Objectives: To discuss the latest developments in trying meth cases and the jury questions and lesser included offenses involved.

10:15 - 11:45 a.m.

Holly

CLE 1.50

Eyewitness Identification:

What You Need to Know About the Science and Kentucky Caselaw

- Glenn McClister, Staff Attorney, Somerset

Objectives:

1. To provide overview of current Kentucky caselaw.
2. To discuss strategies in these cases.
3. To explore motions and hearing practice.
4. To provide resources on the current science regarding memory and best practices in identification.

10:15 - 11:45 a.m.

Dogwood

CLE 1.50

Ethics

Working with Interns and Volunteers

- Marguerite Thomas, Manager, Post Conviction Branch
- Diana Queen, Investigator, *Kentucky Innocence Project*

Objectives: Student Interns can be an invaluable resource for public defender offices. In this session participants will discuss the unique ethical issues involved in training and supervising non-attorney student interns including:

1. Unauthorized Practice of Law
2. Confidentiality
3. Boundaries
4. Apparent conflicts between the student's field professional ethics and legal ethics
5. Role as agent of the attorney
6. Candor to the court

Participants will have the opportunity to brainstorm ways to access student interns and unique issues they have encountered in supervising student interns.

10:15 - 11:45 a.m.

Walnut

CLE 1.50

Reversals in the 21st Century

- Tim Arnold, Juvenile Post Dispositional Branch Manager
- John Palombi, Staff Attorney, Post Conviction Branch

Objectives:

1. To identify trends in winning post-trial claims by examining caselaw around the country, in the Sixth Circuit, and in Kentucky.
2. To evaluate which types of claims show potential for winning in the near future.
3. To identify the kinds of questions we should be asking ourselves about our cases to frame issues for greatest likelihood of success on appeal and in post conviction.

10:15 - 11:45 a.m.

Magnolia

CLE 1.50

Competency Hearings

- Jennifer Hall, Staff Attorney, Richmond
- Lynda Campbell, Bluegrass Regional Manager and Richmond Directing Attorney

Objectives:

1. The decision to raise competency issue
2. Investigation
3. Working with an expert
4. Working with KCPC
5. Conducting the hearing
6. What happens if you win

10:15 - 11:45 a.m.

Westlaw (Advanced)

Maple

- Susan Reale, Thomson West, Government Account Manager

CLE 1.50

Objectives: Take your new research skills to the next level. You'll learn how find cases by attorney or judge's name, date, and jurisdiction. Explore statutory materials and learn how you can combine the best of book and online research with Westlaw's easy-to-use online Table of Contents. Delve into KeyCite's unique features that let you fine-tune your result by legal issue, jurisdiction, and other selected criteria. And with My Westlaw, you'll learn how to personalize Westlaw to meet your unique research needs. In addition, you'll learn how easy it is to do statutory research through StatutesPlus—from browsing, to printing just a section of a statute, you'll be surprised at how much easier statutory research has become on Westlaw.com.

10:15 - 11:45 a.m.

Can I Get a Testimonial?

Daisy

Dealing with Hearsay in a Post-Crawford World

CLE 1.50

- Damon Preston, Manager, Appeals Branch

- Randy Wheeler, Staff Attorney, Appeals Branch

Objectives: In the March 2004 case, *Crawford v. Washington*, the U.S. Supreme Court reversed 25 years of settled hearsay and Confrontation Clause law. In this session we will:

1. Explain the Crawford decision, its roots, and the changes it made to existing law;
2. Examine how courts, including the Kentucky Supreme court, have applied *Crawford* in the past 15 months;
3. Discuss the unanswered questions of *Crawford*, primarily what is and what is not a "testimonial" statement;
4. Specify real-life cases where *Crawford* can be used to our clients' advantage; and,
5. Reveal how your case could wind up in the U.S. Supreme Court.

10:15 - 11:45 a.m.

KHEAA Loan Assistance for Public Defenders

Sunflower

- Meredith Robinson, KHEAA

CLE 1.50

Objectives: To provide information on The Student Loan People's new Best in Law loan forgiveness program.

12:00 – 1:00 p.m.

Lunch (included with registration)

Cochran

1:00 - 2:30 p.m.

Litigating in Eyewitness Identification Cases

Archibald

- Colette Tvedt, Suffolk University Law School, Boston, MA

CLE 1.50

Objectives:

1. To review the current science regarding memory and eyewitness identification.
2. To discuss pretrial litigation strategies.
3. To demonstrate techniques to use in opening, cross, and closing.
4. To review possible instructions to request.

1:00 - 2:30 p.m.

Willow

CLE 1.50

Medical Examiner 101

- George Nichols, II, M.D., Commonwealth Medical Legal Services
- Rob Riley, Northern Regional Manager and LaGrange Directing Attorney

Objective: To give an overview of the medical language necessary to understand a basic autopsy, to understand basic autopsy protocols and to identify classic indicators that are present in autopsy for differing causes of homicide.

1:00 - 2:30 p.m.

Holly

CLE 1.50

Immigration and Criminal Law

- Cori Hash, Attorney, Maxwell Street Legal Clinic, Lexington, KY

Objectives:

1. Understand professional responsibility to counsel clients on immigration consequences.
2. Learn about the different categories of immigrant status.
3. Recognize the possible consequences a criminal case can have on immigrant status.

1:00 - 2:30 p.m.

Dogwood

CLE 1.50

Meth Investigation

- Mike Parks, Investigator, London
- Roger Gibbs, Eastern Regional Manager and London Directing Attorney

Objectives: Practical approach to dealing with meth related issues on the defense side of the spectrum.

1. Practical tips for attorneys and investigators;
2. What to look for in police reports;
3. New Statutes, and;
4. How these laws will affect us and our clients.

1:00 - 2:30 p.m.

Walnut

CLE 1.50

Post Conviction Mental Health Issues

- Eric Drogin, J.D., Ph.D., ABPP, Louisville, KY

Objectives: Attendees will learn about the ways which current and prior mental health treatment, assessment, and status issues can be accessed and utilized for obtaining and conducting post-conviction hearings and related negotiations.

1:00 - 2:30 p.m.

Magnolia

CLE 1.50

Ethics

Mentoring: An Orientation for Potential New DPA Mentors

- Margaret Case, Staff Attorney, Education and Strategic Planning Branch

Objectives:

1. This session is designed for those who are interested in taking part as mentors in DPA's pilot mentoring project, which will be implemented first in the Juvenile Post-Dispositional Branch.
2. We will give an overview of how the Department plans to use a mentoring system to ensure effective and ethical practice by newly-hired and recently-hired public defenders. (KRPC 5.1, 5.2)
3. We will offer potential new mentors an opportunity to assess whether the role of mentor is a good fit for each of them, in light of their past experiences, their beliefs and attitudes toward working with others, and their own particular skills and talents.
4. We will provide initial training for potential new mentors on the knowledge, skills, and attitudes necessary for a successful mentor-protégé relationship.

1:00 - 2:30 p.m.

Maple

CLE 1.50

Westlaw (Beginning)

- Susan Reale, Thomson West, Government Account Manager

Objectives: Learn to make Westlaw your key to legal research. I'll start by showing you how to retrieve a document by citation or case name. Explore two fundamental but powerful search methods: Natural Language and Terms and Connectors. In addition, I will show you KeyCite®, West's essential citation research system. You will also learn MyWestlaw, a way to personalize Westlaw to meet your unique research needs. And you will see how easy it is to keep a record of — and return to — each step in your research project.

1:00 - 2:30 p.m.

Daisy

CLE 1.50

Child Sex Abuse Consultations

- Robert Paschall, MD, FAAP, Medical Director, Child Protection Program
Sexual Abuse Management Clinic, St. Louis Children's Hospital

Objectives: An opportunity for individual consultation with Dr. Paschall.

1:00 - 2:30 p.m.

Sunflower

CLE 1.50

KHEAA Loan Assistance for Public Defenders

- Meredith Robinson, KHEAA

Objectives: To provide information on The Student Loan People's new Best in Law loan forgiveness program.

2:45 - 4:15 p.m.

Archibald

CLE 1.50

Storied Persuasion, Divided Attention, and the Juror Listening Dilemma

- Sunwolf, Santa Clara University, Communications Dept., Professor

Objectives:

1. Using live storytelling, as well as video clips from diverse national tellers, the power of narrative persuasion will be offered in the form of specific new tools for communicating to jurors.
2. Ways to increase the vividness and believability of defense theories of the case.
3. Tools to grab juror attention and create juror involvement in opening statements.
4. How to translate written opening statements/closing arguments into more digestible oral language.
5. Techniques to create legitimate "dialogues" instead of monologues during opening statements and closing arguments.
6. How the creation of key "decisional moments" can win tough cases and the power of a witness' choice-making behaviors.
7. New tools to enhance the defense, including: theme-ing witnesses, zoom lens, performing dialogues, attacking witness before direct examination, the use of silence and repetition, story hooks, foreflashes, and the use of wisdom tales from local cultures.

2:45 - 4:15 p.m.

Willow

CLE 1.50

"There's a New Case That Says...":

Recent Developments in the Appellate Courts

- Damon Preston, Appeals Branch Manager
- Linda Roberts Horsman, Staff Attorney, Appeals Branch

Objectives: In this session, trial and appellate attorneys will learn of dozens of recent published opinions likely to impact criminal defense practice. Among the issues to be covered are:

1. What was the "split decision" in the U.S. Supreme Court applying *Miranda* and how did Justice Kennedy get so much power?

2. Did a driver who fled an accident scene tamper with physical evidence just by sobering up?
3. Can a judge deny the Commonwealth's motion to amend an indictment as part of a plea agreement?

And much more!! Guaranteed No Fluff!! 90 minutes jam-packed with information!

2:45 - 4:15 p.m.

Holly

CLE 1.50

Difficult Clients

- La Mer Kyle-Reno, Directing Attorney, Cynthiana

Objectives: An interactive session discussing ethical guidelines concerning our relationship with our clients underscoring the importance of building this rapport. The session will feature short sketches involving issues such as the client that is entirely focused on bond, their hatred of the alleged victim, the not-so-truthful client, and also the mentally ill or retarded client.

2:45 - 4:15 p.m.

Dogwood

CLE 1.50

Arson Investigation

- Mike Parks, Investigator, London

Objectives: How an arson investigation is conducted determining the cause of a fire: arson or accidental.

2:45 - 4:15 p.m.

Walnut

CLE 1.50

Substance Abuse Treatment Programs in Kentucky

- Karyn Hascall, Deputy Director, Office of Drug Control Policy, Justice Cabinet

Objectives:

1. Understand the nature of addiction treatment.
2. Become aware of treatment resources in Kentucky.
3. Learn how to make a referral to treatment.

2:45 - 4:15 p.m.

Magnolia

CLE 1.50

Ethics

Mentoring:

A Dialogue Opportunity for Potential New DPA Mentors and Protégés

- Margaret Case, Staff Attorney, Education and Strategic Planning Branch

Objectives:

1. This session is designed for those who are planning to take part as mentors or as proteges in DPA's pilot mentoring project, which will be implemented first in the Juvenile Post-Dispositional Branch.
2. We will offer potential new protégés an opportunity to assess whether they might benefit from seeking a mentor through this pilot project.
3. We will give potential new mentors and protégés an opportunity to discuss the benefits and problems they might foresee arising from DPA's mentoring program.
4. We will sensitize new mentors and protégés to client confidentiality and conflict of interest issues that can arise during a mentor-protégé relationship. (KRPC 1.6, 1.7(b))

2:45 - 4:15 p.m.

Drug Courts

Sunflower

CLE 1.50

- John Delaney, Directing Attorney, Boone Co.
- Rob Riley, Northern Regional Manager and LaGrange Directing Attorney
- Lynda Campbell, Bluegrass Regional Manager and Richmond Directing Attorney

Objectives: A panel group discussion of the issues facing public defenders when a client becomes involved in drug court including:

1. The role of the public defender:
 - a. Before the client chooses to go to drug court;
 - b. While the client is in drug court;
 - c. In the event the client fails in drug court.
2. Confidentiality rights and waiver.
3. Candor toward the tribunal.
4. Representing client under a disability.

4:20 - 4:45 p.m.

Closing – Ernie Lewis, Public Advocate

Archibald

CLE 0

5:00 - 5:45 p.m.

New Staff

Dogwood

CLE 0

- Ernie Lewis, Public Advocate

Objectives: New defender attorneys and defender staff who have joined DPA since August 2004 are invited to come and discuss their new roles and learn about the expectations of excellence and professionalism at DPA.

5:00 - 5:45 p.m.

Law Clerk and Intern Orientation with Law Operations

Walnut

CLE 0

THURSDAY, JUNE 9, 2005

7:00 - 8:15 a.m.

Buffet Breakfast (*included with registration*)

Cochran

8:30 - 11:45 a.m.

Clandestine Meth Labs

Dogwood

CLE 1.50

- James Asquito, Enforcement Division Director,
Kentucky Office of Alcoholic Beverage Control

Objectives:

1. To introduce the audience to Methamphetamine, and its clandestine manufacture.
2. To illustrate common laboratories, and the behavior of offenders.
3. To highlight safety and evidentiary issues, and discuss new statutes.

**Full-Time Kentucky Public Defenders
Kentucky Bar Association Conference at the
Kentucky International Convention Center**

**Working Together to Preserve
Respect for the Law and the Profession**

THURSDAY, JUNE 9

8:30 - 9:30

Kentucky Appellate Courts:

Motion Practice and Practice Pointers

Featuring: George E. Fowler Jr. and Monique D. Winther, Frankfort. Sponsor: KBA Young Lawyers Section. While all practitioners are familiar with motion practice in trial courts, fewer practitioners have much experience with motion practice in Kentucky state appellate courts. This program will help demystify the practice and procedure. In conjunction with a discussion of appellate motion practice, this program will discuss the results of a 2004 survey of the Supreme Court and Court of Appeals in which the justices and judges were asked their opinions on many different facets of appellate practice. The results of the survey were also featured in a recent Bench & Bar article by Court of Appeals Chief Staff Attorney George E. Fowler, Jr. Don't miss this opportunity to obtain insight on the preferences of the judiciary and to be a smarter appellate practitioner! **CLE Credit: 1.0**

8:30 - 10:30

**How to Avoid Non-Meritorious Ethics Complaints
While Simultaneously Increasing Income**

Featuring: Jay G. Foonberg, Santa Monica, California. Sponsor: KBA Small Practice Management Section. This is the most practical two hours of advice you may ever get! Mr. Foonberg, our Featured Speaker for the Wednesday opener, is back for this nuts and bolts law firm management program. Good management is not only good management, it keeps you from getting those "love letters" from the KBA and it keeps you from having to deal with your malpractice carrier! Isn't that worth listening to? Mr. Foonberg's bestselling books, *How to Start and Build a Law Practice*, *ABA Guide to Lawyer Trust Accounts*, *Finding the Right Lawyer*, and *How to Get and Keep Clients* serve as background for this program and will serve up numerous nitty-gritty details on how to do it right! **CLE Credit: 2.0 Ethics**

8:30 - 11:45

Alternate Dispute Resolution:

Thinking Outside the Courthouse

Featuring: Richard A. Bales, Highland Heights; Foster Ockerman, Jr., Lexington; Judge Cynthia E. Sanderson, Paducah; Judge Barry L. Willett, Louisville; Lucinda C. Masterton, Lexington; Teddy L. Flynt, Salyersville; Darrin W. Banks, Paintsville; Karen L. Walker, Lexington; Paula M. Young, Grundy, Virginia; Anthony R. Patrick, Morehead. Sponsor: KBA ADR Section: The KBA's newest section will be providing three separate topics and focusing on Think-

ing Outside the Courthouse for dispute resolution models. The first portion of the program features "Employment Arbitration: Twenty Open Issues," with a focus on conflicts of interest. Second the ADR Section will feature a lively interactive panel between judges, lawyers, adjusters, and mediators - exploring the impact mediation is having on the way cases are litigated in Kentucky. "Mediation: Changing the Face of Litigation in Kentucky" will feature pre-litigation mediation, the interplay between lawyer/adjuster/mediator, mediation vs. jury trial, preparing a case for mediation, advanced mediation strategies, ethical concerns, and the future of mediation. Finally, there will be a special session on ADR Ethics, presenting the ethical dilemmas in various forms of ADR and how to properly address them. All sessions will be interactive and open to audience participation. **CLE Credit: 2.0 Ethics**

8:30 - 11:45

Theater Tips and Strategies for Jury Trials

Featuring: Dr. David A. Ball, Durham, North Carolina. Sponsor: KBA Civil Litigation Section: Join nationally known jury consultant and trial skills trainer David Ball for a practical and insightful program on methods and approaches to jury persuasion. Based upon Ball's national best-seller, *Theater Tips and Strategies for Jury Trials*, this program presents techniques of the stage and screen that you can use to persuade and motivate jurors, and to win in the courtroom. Ball, who is trained in communications, theater, and film describes what practitioners can learn from actors about their manner, voice projection, and behavior and how they can gain trust and credibility from judges and jurors. A fresh, useful approach - and a program not to be missed! **CLE Credit: 3.0**

9:45 - 11:45

**Trials and Tribulations: Ethical Guideposts on Surviving
the Practice of Law and Your Life as a Lawyer**

Featuring: Asa P. Gullett III, Louisville; C. Houston Ebert, Frankfort; Dr. Eric Y. Drogin, Hingham, Massachusetts. Sponsor: KBA Young Lawyers Section: Attorneys do not practice law in a vacuum. We face ethical challenges on a daily basis in both our personal and professional lives. It is important to know that we are not alone in facing these challenges. This program will provide valuable information on facing those challenges and on how to avoid taking the wrong turn. **CLE Credit: 2.0 Ethics**

10:45 - 11:45

I'm from the IRS and I'm Here to Help You...REALLY!

Featuring: Nina E. Olson, National Taxpayer Advocate, Washington, D.C. Sponsor: KBA Tax Law Section: National Taxpayer Advocate Nina E. Olson speaks up for taxpayers! Isn't

it nice to have a friendly voice on your side? Ms. Olson is empowered by Congress to speak up within the IRS for the ordinary citizen and is outspoken in her urging of consumer-friendly tax procedures. Ms. Olson called on Congress to enhance protection of taxpayer rights as a mandatory component of tax administration. This energetic advocate will share insights to the Taxpayer Advocate Service and what it can offer you and your clients. **CLE Credit: 1.0**

2:00 - 3:00

Federal Regulation of the Legal Profession

Featuring: Professor Geoffrey C. Hazard, Jr., University of Pennsylvania School of Law, Philadelphia, Pennsylvania. Professor Geoffrey Hazard, Trustee, Professor of Law at the University of Pennsylvania School of Law, is perhaps the primary figure today in legal ethics in the country. When someone says "He wrote the book" they really mean it when speaking of Professor Hazard. The national standard for legal ethics and professional responsibility is the American Law Institute's *The Law of Lawyering*, co-edited by Professor Hazard. Join us as he addresses the role the federal government has begun to have in regulating the practice of law, an area traditionally reserved for state courts. You might as well hear it from the source! **CLE Credit: 1.0 Ethics**

3:15 - 5:00

Views from the Bench

Featuring: Justice Donald C. Wintersheimer, Covington; Judge John D. Minton, Jr., Bowling Green; Judge Anthony W. Frohlich, Union; Judge Brian Wiggins, Greenville; Judge Karen K. Caldwell, London. Sponsor: KBA Young Lawyers Section: The Young Lawyers Section presents its extremely popular program featuring a panel of judges from all levels of Kentucky state courts and a federal judge. Here is your opportunity to learn the judges' preferences and pet peeves, and to be a smarter practitioner. This program is valuable for the most novice to the most senior attorney. Don't miss this opportunity! **CLE Credit: 1.75**

3:15 - 5:00

Residential Construction Issues:

Working Together to Build Better and Safer Towns

Featuring: Gregg Y. Neal, Shelbyville; H. Edwin Bornstein, Louisville; John W. Hays, Lexington; J. Richard Cheeks, Nicholasville; Gerald L. Stovall, Louisville. Sponsor: KBA Construction and Public Contract Law Section: The Kentucky Bar Association's Construction and Public Contract Law Section will present a session on residential construction. Included in this session is a discussion on the defective construction statute and the requirements that a homeowner notify his builder of defects in the work and give the builder an opportunity to cure those defects before the homeowner can file a lawsuit against the builder. In addition, an experienced panel will discuss some of the issues facing the builder and homeowner in residential construction including mechanics' and materialmen's liens on residential

property; control over the design-build format on residential construction; warranties in residential construction; dispute resolution for residential claims; and, the economics of representing parties in a residential dispute. **CLE Credit: 1.75**

3:15 - 5:00

Stopping Violence on the Home Front:

Lessons Learned from Our Civil and Criminal Practice

Featuring: Judge Joan L. Byer, Louisville; Representative Robin L. Webb, Grayson; Jason S. Fleming, Hopkinsville; Dr. James J. Clark, Lexington; Dr. H. Otto Kaak, Lexington; and Eileen O'Malley, Lexington. Sponsor: KBA Committee on Child Protection and Domestic Violence: In representing family members in our civil and criminal practices we frequently are confronted with evidence of domestic violence. We see adults who bear marks of a turbulent childhood, and we see children whose eyes speak to us of desperation with little hope of a way out. Sometimes it is our role to surface the pain, sometimes evidence of domestic violence seems irrelevant to the cause of action that led us to court. In our concern for the humanity of our clients how can we as lawyers help to stop violence on the home front? Experts will help us understand the full impact of domestic violence on children as the collateral victims. From legal, medical and therapeutic experts we will receive practical advice on how to be more effective in our roles as lawyers for family members caught in the wake of destruction. **CLE Credit: 1.75**

3:15 - 5:00

Sentencing and Incarceration:

The Urgent Need for New Solutions to an Old Problem

Featuring: Professor Stephen A. Saltzburg, Georgetown Law, Washington, D.C. and a panel of Kentucky's finest legal minds. Sponsor: KBA Criminal Law Section: Professor Saltzburg will present and discuss the recommendations included in the American Bar Association/Justice Kennedy Commission Report. The recommendations, the result of a nearly year-long review of problems confronting state and federal criminal justice systems, focus on four primary sets of issues, to wit: (1) punishment, incarceration and sentencing; (2) racial and ethnic disparity in the criminal justice system; (3) clemency, sentence reduction, and restoration of rights; and (4) prison conditions and prisoner reentry. In light of the U.S. Supreme Court's decision in *United States v. Booker*, rendered earlier this year, Professor Saltzburg also will address the importance of congressional action to assure that federal sentencing practices are effective, fair and just, and effectuate the goals set forth in the Sentencing Reform Act. Thereafter, a distinguished panel of Kentucky's criminal justice system leaders, including Lt. Governor Stephen B. Pence and Professor Robert G. Lawson, former dean of the UK College of Law, will react and comment upon Professor Saltzburg's remarks and relate their views on sentencing practices in Kentucky and their effect on the justice and corrections systems. **CLE Credit: 1.75** ■

FACULTY ADDRESS, PHONE, FAX, E-MAIL

James Acquisto

Enforcement Director
Kentucky Alcohol &
Beverage Control
1003 Twilight Trail, Ste A-2
Frankfort, KY 40601
Tel: (502) 564-4850; Fax: (502) 564-8150
Email: Jim.Acquisto@ky.gov

Tim Arnold

Post Dispositional Branch Manager
Department of Public Advocacy
100 Fair Oaks Lane, Ste 302
Frankfort, KY 40601
Tel: (502) 564-8006; Fax: (859) 564-7890
E-mail: Tim.Arnold@ky.gov

Jay Barrett

Trial Division Director
Department of Public Advocacy
100 Fair Oaks Lane, Ste 302
Frankfort, KY 40601
Tel: (502) 564-8006; Fax: (859) 564-7890
E-mail: Jay.Barrett@ky.gov

Dennis Burke

Department of Public Advocacy
100 Fair Oaks Lane, Ste 301
Frankfort, KY 40601
Tel: (502) 564-3948; Fax: (502) 564-3949
E-mail: Dennis.Burke@ky.gov

J. Frank Burnette

Director of Client Assistance
KBA
514 W. Main Street
Frankfort KY 40601-1883
Tel: (502) 564-3795; Fax: (502) 564-3225
E-mail: fburnette@kybar.org

Lynda Campbell

Bluegrass Regional Manager
Department of Public Advocacy
116 North Second St.
Richmond, KY 40475-0766
Tel: (859) 623-8413; Fax: (859) 623-9463
E-mail: Lynda.Campbell@ky.gov

Margaret Case

Department of Public Advocacy
100 Fair Oaks Lane, Ste 302
Frankfort, KY 40601
Tel: (502) 564-8006; Fax: (859) 564-7890
E-mail: Margaret.Case@ky.gov

Lisa Clare

Department of Public Advocacy
100 Fair Oaks Lane, Ste 302
Frankfort, KY 40601
Tel: (502) 564-8006; Fax: (859) 564-7890
E-mail: Lisa.Clare@ky.gov

Jerry Cox

Clontz & Cox
P.O. Box 1350
Mount Vernon, KY 40456
Tel: (606) 256-5111; Fax: (606) 256-2036
E-mail: jcox@kih.net

Debbie Davis

6616 Dixie Hwy, Suite 4
Florence, KY 41042
Tel: (859) 746-1456; Fax: (859) 746-3025
Email: ddavis4124@aol.com

John Delaney

Directing Attorney
Department of Public Advocacy
8311 US 42
Victory Center, Ste 210
Florence, KY 41042
Tel: (859) 282-0818; Fax: (859) 282-1582
E-mail: John.Delaney@ky.gov

Rebecca Ballard DiLoreto

Director, Post Trial Division
Department of Public Advocacy
100 Fair Oaks Lane, Suite 302
Frankfort, KY 40601
Tel: (502) 564-8006; Fax: (502) 564-7890
E-mail: Rebecca.DiLoreto@ky.gov

Eric Drogin, J.D., Ph.D., ABPP

4949 Old Brownsboro Road
Louisville, KY 40222
Tel: (877) 877-6692; Fax: (877) 877-6685
E-mail: eyd@drogin.net

Paul Flinker

Department of Public Advocacy
8311 US 42
Victory Center, Ste 210
Florence, KY 41042
Tel: (859) 282-0818; Fax: (859) 282-1582
E-mail: Paul.Flinker@ky.gov

Scott Gamble

Field Supervisor,
AOC, Pretrial Services
100 Millcreek Park
Frankfort, KY 40601
Tel: (502) 573-2350; Fax: (502) 573-0237
E-mail: ScottGamble@Kycourts.net

Roger Gibbs

Directing Attorney
Department of Public Advocacy
911 N. Main St.
London, KY 40741
Tel: (606) 878-8042; Fax: (606) 864-9526
E-mail: Roger.Gibbs@ky.gov

Jim Gibson

Department of Public Advocacy
PO Box 6570
Shepherdsville, KY 40165
Tel: (502) 955-8594; Fax: (502) 543-7656
E-mail: JimC.Gibson@ky.gov

Jennifer Hall

Department of Public Advocacy
116 North Second St.
Richmond, KY 40475-0766
Tel: (859) 623-8413; Fax: (859) 623-9463
E-mail: JenniferL.Hall@ky.gov

Karyn Hascal

Deputy Director
Office of Drug Control Policy
Justice Cabinet
403 Wapping St.
Frankfort, KY 40601
Tel: (502) 564-9564; Fax: (502) 564-6104
E-mail: Karyn.Hascal@ky.gov

Cori Hash

Maxwell Street Legal Clinic
201 East Maxwell Street
Lexington KY 40508
Tel: (859) 233-3840
Email: corihash@earthlink.net

Ed Hoskins

AOC, Pretrial Services
Court Security Unit
100 Millcreek Park
Frankfort, Kentucky 40601
Tel: (502) 573-2350; Fax: (502) 573-0327
E-mail: Edhoskins@kycourts.net

Dawn Jenkins

Department of Public Advocacy
207 Parker Drive, Ste 1
LaGrange, KY 40031
Tel: (502) 222-6682; Fax: (502) 222-3177
E-mail: Dawn.Jenkins@ky.gov

LaMer Kyle-Reno

Department of Public Advocacy
221 South Main St., Ste 101
Cynthiana, KY 41031
Tel: (859) 234-4535; Fax: (606) 234-2422
E-mail: LaMer.Kyle-Reno@ky.gov

Ernie Lewis

Public Advocate
Department of Public Advocacy
100 Fair Oaks Lane, Suite 302
Frankfort, KY 40601
Tel: (502) 564-8006; Fax: (502) 564-7890
E-mail: Ernie.Lewis@ky.gov

Melanie Lowe

Department of Public Advocacy
300 North First Street
LaGrange, KY 40031
Tel: (502) 222-9441; Fax: (502) 222-5984
E-mail: Melanie.Lowe@ky.gov

Glenn McClister

Department of Public Advocacy
650 N Main St., Ste 222
Somerset, KY 42501
Tel: (606) 677-4129; Fax: (606) 677-4130
E-mail: Glenn.McClister@ky.gov

Charlotte McPherson

Field Supervisor
AOC, Pretrial Services
100 Millcreek Park
Frankfort, KY 40601
Tel: (502) 573-2350; Fax: (502) 573-0237
E-mail: CharlotteMcpherson@ky.court.net

Don Morehead

Department of Public Advocacy
100 Fair Oaks Lane, Suite 302
Frankfort, KY 40601
Tel: (502) 564-8006; Fax: (502) 564-7890
E-mail: DonaldH.Morehead@ky.gov

Rick Neal

Dept. of Public Advocacy
100 Fair Oaks Lane, Ste 301
Frankfort, KY 40601
Tel: (502) 564-3948; Fax: (502) 564-3949
E-mail: Richard.Neal@ky.gov

George R. Nichols, II, M.D.

2307 Greene Way
Louisville, KY 40220-4009
Tel: (502) 499-0077
Fax: (502) 499-9921

J. David Niehaus

Louisville Metro Public
Defender's Office
200 Civic Plaza
719 W. Jefferson Street
Louisville, KY 40202
Tel: (502) 574-3800; Fax: (502) 574-4052
E-mail: David.Niehaus@ky.gov

Bette J. Niemi

Dept. of Public Advocacy
P.O. Box 657
650 North Buckman Street
Shepherdsville, KY 40165
Tel: (502) 955-8594; Fax: (502) 543-1962
E-mail: Bette.Niemi@ky.gov

John Palombi

Department of Public Advocacy
100 Fair Oaks Lane, Suite 301
Frankfort, KY 40601
Tel: (502) 564-3948; Fax: (502) 564-3949
E-mail: John.Palombi@ky.gov

Mike Parks

Department of Public Advocacy
911 N. Main St.
London, KY 40741
Tel: (606) 878-8042; Fax: (606) 864-9526
E-mail: Mike.Parks@ky.gov

Dr. Robert Paschall

Medical Director,
Child Protection Program/Sexual Abuse
Management Clinic
St. Louis Children's Hospital
Washington University
School of Medicine
One Children's Place
St. Louis, Missouri 63110
Tel: (314) 454-2571
Email: Paschall@kids.wustl.edu

Damon Preston

Department of Public Advocacy
100 Fair Oaks Lane, Suite 302
Frankfort, KY 40601
Tel: (502) 564-8006; Fax: (502) 564-7890
E-mail: Damon.Preston@ky.gov

Diana Queen

Dept. of Public Advocacy
100 Fair Oaks Lane, Ste 301
Frankfort, KY 40601
Tel: (502) 564-3948; Fax: (502) 564-3949
E-mail: Diana.Queen@ky.gov

Susan E. Reale, Esq.

Government Account Manager
Thomson West
9462 Brownsboro Road, Suite 147
Louisville, KY 40241
Tel: (502) 339-2104; Fax: (502) 371-0866
E-mail: susan.reale@thomson.com
www.west.thomson.com
www.westlaw.com

Rob Riley

Northern Regional Trial Manager
Department of Public Advocacy
300 North First Street
LaGrange, KY 40031
Tel: (502) 222-9441; Fax: (502) 222-5984
E-mail: Rob.Riley@ky.gov

Bill Robinson

Greenebaum, Doll & McDonald
50 E Rivercenter Blvd
Covington, KY 41011
Tel: (859) 655-4210 (Covington)
(513) 455-7650 (Cincinnati)
Fax: (859) 655-1211

Gail Robinson

Department of Public Advocacy
100 Fair Oaks Lane, Ste 302
Frankfort, KY 40601
Tel: (502) 564-8006
Fax: (859) 564-7890
E-mail: GailM.Robinson@ky.gov

Meredith Robinson

KHEAA
Tel: (502) 696-7612

Sunwolf

Professor, Communications Dept.
Santa Clara University
500 El Camino Real
Santa Clara, CA 95053-0277
Tel: (408) 554-4911; Fax: (408) 554-4913
E-Mail: sunwolf@scu.edu

Marguerite Thomas

Dept. of Public Advocacy
100 Fair Oaks Lane, Ste 302
Frankfort, KY 40601
Tel: (502) 564-8006; Fax: (502) 564-7890
E-mail: Marguerite.Thomas@ky.gov

Sharon Travis

Department of Public Advocacy
739 South Main St.
Henderson, KY 42419-0695
Tel: (270) 826-1852; Fax: (270) 826-3025
E-mail: Sharon.Travis@ky.gov

Colette Tvedt

Suffolk University Law School
Clinical Programs
120 Tremont Street
Boston, Mass 01208-4977
Tel: (617) 305-1642; Fax: (617) 742-2139
Email: ctvedt@suffolk.edu

Robert Walker

Center on Drug & Alcohol Research
643 Maxwellton Ct.
Lexington, KY 40506-0350
Tel: (606) 257-6623
E-mail: jrwalk0@pop.uky.edu

B. Scott West

Directing Attorney
Department of Public Advocacy
503 North 16th St.
Murray, KY 42071
Tel: (270) 753-4633; Fax: (270) 753-9913
E-mail: BrianScott.West@ky.gov

Chris Woodall

Department of Public Advocacy
1100 South Main St., 2nd Fl, Ste 22
Hopkinsville, KY 42240
Tel: (270) 826-1852; Fax: (270) 826-3025
E-mail: Chris.Woodall@ky.gov

Vince Yustas

Department of Public Advocacy
PO Box 628
Elizabethtown, KY 42702
Tel: (270) 766-5160; Fax: (270) 766-5162
E-mail: Vince.Yustas@ky.gov

Wilbur M. Zevely

Busald, Funk and Zevely
P.O. Box 6910
Florence, Kentucky 41022-6910
Tel: (859) 371-2300; Fax: (859) 525-1040
Email: willzevely@bfzlaw.com ■

OUR NATIONAL AND KENTUCKY FACULTY BIOGRAPHICAL INFORMATION

JIM ACQUISTO is the Enforcement Division Director for the Kentucky Office of Alcoholic Beverage Control. He was appointed by Governor Ernie Fletcher in January 2005, after serving in the Office of Drug Control Policy in the Justice and Public Safety Cabinet since June 2004. Jim came to state government after 21 years of law enforcement service, during which he spent 15 years in narcotics investigation. He spent six years investigating methamphetamine labs in Western Kentucky, and graduated from DEA Clandestine Lab Certification, Site Safety Officers training, and Tactical Lab training. Jim frequently presents meth and drug programs for DOJT, DEA, and across the country for the National Sheriff's Association and the National College of District Attorneys. Jim worked extensively on SB 63, including the methamphetamine provisions, and as a member of the Attorney General's Internet Pharmacy Task Force. Jim has testified as a drug expert in federal and state courts, and appeared before the legislature in the last three sessions.

TIM ARNOLD is a graduate of Knox College in Galesburg, IL, and the University of Kentucky College of Law. He has been with the Juvenile Post Dispositional Branch in Frankfort, KY since 1996, and now serves in the Branch Manager.

JAY BARRETT is a 1979 graduate of the University of Connecticut School of Law and its criminal legal clinic. He joined DPA in 1982 as directing attorney of the Stanton office and also served as East Regional Manager from 1986 to 1988. After three years with New Hampshire Public Defenders Jay returned to Kentucky in private practice from 1992 to 2001, rejoining DPA in the Paintsville office. He served as Acting Trial Division Director from February of 2004 until October and is currently the Trial Division Director.

FRANK BURNETTE received a BA (1978) and JD (1981) from the University of Louisville and an L.L.M. from the Judge Advocate General's School, Charlottesville, VA. Frank has a mediator certification from the International Center for Dispute Resolution and Leadership, Sullivan University. Frank's bar memberships include Kentucky, the U.S. Court of Appeals for the Armed Forces, and the U.S. Supreme Court. During his career in the U.S. Army Judge Advocate General's Corps, Frank served in numerous criminal law positions. He has been a prosecutor, area defense counsel, and Senior Defense counsel in Seoul Korea and later at Fort Knox, KY. In three appellate positions, Frank has served as a Government Appellate Counsel, Defense Appellate Branch Chief, and as Commissioner for a Panel of the U.S. Army Court of Criminal Appeals. Frank was also selected to teach constitutional and military law at the U.S. Military Academy in West Point, NY. In January 1999, Frank joined KBA as the Director of the Client Assistance Program.

LYNDA CAMPBELL attended the University of Florida and graduated in 1977 and got her J.D. in 1980 from Florida State University. Lynda worked as a public defender in Daytona Beach, Florida for 4 years and then joined the DPA in 1984. She is presently the Directing Attorney in the Richmond trial office, and Bluegrass Regional Manager for DPA trial offices.

MARGARET CASE is a Lexington native who graduated from Transylvania University and the University of Kentucky College of Law. After working as a DPA appellate law clerk, Margaret left the agency for a federal district court clerkship. Then, while in private practice in Danville, she routinely handled appeals for indigent criminal defendants as a member of DPA's panel of contract lawyers. But, in 1989, Margaret returned to DPA full-time and, over the years, has worked at every level of criminal defense litigation — at trial, on direct appeal, and in post-conviction. For nine years, her practice was exclusively in death penalty defense. Currently, Margaret is a staff attorney with the Education and Strategic Planning Branch. She holds membership in the Kentucky and National Associations of Criminal Defense Lawyers. In 2004, she was DPA's *Gideon Award* recipient. Margaret is active in the Christian Church (Disciples of Christ). She and her husband Bill are ardent environmentalists and birders.

LISA CLARE graduation *summa cum laude* from Georgetown College in 1978. From there, she obtained a Master of Divinity prior to entering the University of Kentucky College of Law. She has practiced law for the past 18 years and has led workshops in the following areas of law: housing, disability, special education, juvenile, and most recently, the impact of immigration law in the practice of criminal law. She and her husband have four children and live in Shelby County.

JERRY J. COX is a senior partner in *Clontz & Cox, LLC* and has been practicing criminal defense law for over 36 years. He has served on the faculty of DPA's Trial Practice Institute. He is a member of the American and Kentucky Bar Associations and has served on the KBA's Unauthorized Practice of Law Committee (1993-Present), Criminal Rules Committee (1995-Present), Legislative Committee (1999-Present), Prescription Drug Abuse Task Force (2003) and as Chair of the Criminal Law Section (1994). He is a member of the Kentucky Association of Criminal Defense Lawyers; received the Presidential Award in 1995 and served as President in 1997. He is a life member of NACDL and has served on the Board of Directors since 2000. He also serves as Chairman of the NACDL Audit Committee (2001-Present). In 2003, he was recognized by the NACDL for significant contributions to the members of NACDL. He also served on the Kentucky Criminal Justice Council's Drug Strategy Committee (1999-present), Public Advocacy Commission (1999) and the Kentucky Bar Foundation (President, 2002). Jerry Cox is certified as a Criminal Specialist by the National Board of Trial Advocacy. In 2004, he served on the NBTB Board of Examiners. In 2002, he was awarded DPA's Nelson Mandela Lifetime Achievement Award for his commitment to criminal defense.

DEBBIE DAVIS is an attorney and a registered nurse whose office is located in Florence, Kentucky. Debbie is also a Diplomat with the American Board of Forensic Nursing. She began working with DPA as a law clerk in the Post Conviction Appeals Branch as a law student under Dennis Stutsman. While a law student at Chase School of Law, she worked to obtain the release of Herman May through the *Kentucky Innocence Project*. She continues to consult with other attorneys and innocent projects across the US and is a nationally known speaker. Debbie also serves as a DPA conflict attorney in Northern Kentucky. She lives in Fort Mitchell with her husband Bob and three daughters. One of her hobbies is swimming with the Stingrays.

JOHN DELANEY graduated from the University of Massachusetts in 1985 with a degree in economics. He worked in the Peace Corps after college for the ministry of Agriculture in Tanzania and in 1992, graduated from Western New England College of Law. Prior to working for DPA, he worked for New England Legal Services and Massachusetts Committee for Public Counsel Services. Mr. Delaney started working for DPA in 1993 in Pikeville; left DPA in 1997 to work for a private firm in Northern Kentucky and returned to DPA in 1998. Since the fall of 2003, John has been the Directing Attorney for the Boone County Office.

REBECCA BALLARD DiLORETO has been with the Department of Public Advocacy since she began work as a law clerk in 1984. She has worked at the trial, appellate and post conviction level. She enjoys the creativity involved in criminal defense work and the opportunities present in this work to both help others and improve the justice system. She has learned from many great criminal defense lawyers, investigators, mitigation specialists and secretaries in Kentucky through the years including Ed Monahan, Ernie Lewis, Kathy Powers, Barbara Holthaus, Lisa Fenner, Diana Queen, Bill Johnson and Marguerite Thomas. She continues to learn a great deal from the new lawyers and professional staff who join DPA each year. Working as DPA's Post Trial Division Director since the creation of the division in 1997 has allowed Rebecca to see our work from a variety of perspectives. With her husband, an Italian romantic, Rebecca is blessed with three children, two teenagers and one near teen. They make their home in the Bluegrass.

ERIC DROGIN is a Fellow of the American Academy of Forensic Psychology (AAFP) and is Board Certified by the American Board of Professional Psychology (ABPP) and the American Board of Forensic Psychology (ABFP). He currently serves as President-Elect and National Chair of Examinations of the ABFP, and as President of the New Hampshire Psychological Association (NHPA), while his recent American Psychological Association (APA) roles have included Chair of the Committee on Legal Issues (COLI) and Chair of the APA/ABA Task Force. Dr. Drogin is an Associate Clinical Professor of Psychiatry and Behavioral Sciences of the University of Louisville School of Medicine. He received his Doctor of Philosophy (Ph.D.) degree in Clinical Psychology from Hahnemann University. Dr. Drogin's current American Bar Association (ABA) involvement includes the Life & Physical Sciences Division (Chair), the Commission on Mental & Physical Disabil-

ity Law (Commissioner), the Behavioral Sciences Committee (Member), the Scientific Misconduct Committee (Member), and the Standing Committee on Scientific Evidence (Member). Recently elected as a Member of Council of the ABA Section of Science and Technology Law, he is also an ABA appointee to the National Conference of Lawyers & Scientists (NCLS), a committee jointly sponsored by the ABA and the American Association for the Advancement of Science (AAAS). Dr. Drogin is an Adjunct Professor of Law and Mental Health of the Franklin Pierce Law Center. He received his Juris Doctor (J.D.) degree from the Villanova University School of Law. Having authored or co-authored approximately 140 legal and scientific publications to date, including the ABA's *Criminal Law Handbook on Psychiatric and Psychological Evidence and Testimony* and its companion volume, the *Civil Law Handbook on Psychiatric and Psychological Evidence and Testimony*, Dr. Drogin has lectured extensively throughout the United States and in England, Ireland, Wales, and Canada. He regularly presents workshops for attorneys and mental health professionals on such topics as forensic assessment, ethics, and professional development. Dr. Drogin's multidisciplinary practice encompasses mental health law, expert witness testimony, and trial consultation.

SCOTT GAMBLE began his career with Pretrial Services as a co-op student from Western Kentucky University in 1983. He traveled statewide, and provided time off for permanent/full-time pretrial officers. He interviewed defendants, conducted criminal histories, and provided court coverage. In 1984 Mr. Gamble was promoted to a Permanent/Full-time Pretrial Officer position for Allen and Simpson Counties, District 49. He was a rural pretrial officer in the 49th District for 17 years. He was responsible for processing defendants, tracking defendants for court appearances, and supervising local staff. In June of 2001, Mr. Gamble was promoted to the position he holds today, Field Supervisor. His responsibilities include statewide support, promoting central office initiatives, and training new pretrial officers. Mr. Gamble has an Associates Degree from the University of Kentucky Community College, and he attended Western Kentucky University. Currently, he is involved with a newly created Diversion Standards Committee. The committee will implement statewide standards for Pretrial Services Diversion programs.

ROGER GIBBS is a graduate of Georgetown College and the University of Kentucky College of Law. He was a staff attorney for the Jefferson County Public Defender's office from 1986 to 1993. Since 1993, Roger has been Directing Attorney for DPA's London office and the Eastern Regional Manager. Roger is the father of two wonderful children, James and Hannah, and the husband of Teresa.

JIM GIBSON graduated from the University of Kentucky College of Law in December 1975. He has been with DPA's Capital Trial Branch since 1997. In prior lives, he was in private practice, served in the Army JAG Corps, and was a staff attorney with the Louisville Public Defender Office.

CORI HASH is an Equal Justice Works Fellow at the Office of Kentucky Legal Services Programs. She works at the Maxwell Street Legal Clinic offering legal assistance to low-income immigrants. She represents clients in family-based immigration, citizenship, asylum, and other immigration legal matters. She also focuses on the issue of economic exploitation of immigrants, specifically unpaid wages, denial of public benefits, and consumer fraud. Ms. Hash is a graduate of the University of Texas, where she received her degree in Latin America Studies, and the University of Texas School of Law. She is a member of both the Texas and Kentucky bars.

LINDA ROBERTS HORSMAN is a graduate of Georgetown College and the University of Dayton School of Law. She began her legal work with Appalred in Prestonsburg and then as a staff attorney for the Legal Aid Society in Louisville, where she concentrated her practice on housing and consumer issues. After a brief stint with a private firm practicing estate planning, probate, and taxation, she came to DPA. She has now been with DPA for 4 years as an Appellate Public Advocate in the Frankfort office.

ED HOSKINS is a native of Daviess County. He has been employed by the Kentucky Administrative Office of the Courts since 1994. As a Court Security Inspector assigned to the Court Security Unit, he plans and provides additional security for trials that are considered high-risk or high-profile. He teaches classes during the Court Security Procedures course, which is offered numerous times during the year throughout the state for all court security personnel and court bailiffs. This training is conducted through the Department of Criminal Justice Training and has been approved by the Kentucky Law Enforcement Council. Also, he has conducted dozens of surveys throughout western Kentucky for the purpose of determining how to enhance security at judicial facilities. In 1994 and 2004, he attended the U.S. Marshals Service's "State and Local Court Security Seminar" at the Federal Law Enforcement Training Center. Mr. Hoskins began his career in law enforcement when he joined the Kentucky State Police in 1966. After a short tour of active duty with the US Army Reserves, he entered the KSP academy the next year, graduating in 1968. He was first assigned as a trooper at the Dry Ridge Post in Grant County. In 1970, he transferred to the Henderson Post and was assigned to work Daviess County. In 1985, Mr. Hoskins transferred to the KSP Driver Testing section and was assigned to work Western Kentucky as a license examiner and a CDL examiner. After 27 years of service, he retired in 1993. In addition to his career in law enforcement and court security, Mr. Hoskins has

been a part of the U.S. military. In 1973, he enlisted in the US Coast Guard Reserves. Eventually, his duty became the Unit Operations Officer in Owensboro, where he was responsible for the assignments of all the non-administrative enlisted crewmembers. He oversaw augmenting the active duty Coast Guard Units in their responsibility of maintaining the Aids to Navigation and inspecting barges and facilities that carry and transfer dangerous cargo. In addition, he was the unit's Command Enlisted Advisor. At the end of his military reserve career, he was assigned to the Joint Transportation Reserve Unit, US TRANSPORTATION COMMAND, Scott AFB, IL. He worked as a Senior Enlisted watch stander of J3/4, Operations & Logistics. After 35 years in the reserves, he retired as a Master Chief Petty Officer, in June 2003.

DAWN JENKINS graduated in 1996 with an MSW from University of Louisville Kent School of Social Work and was the recipient of the Bertha Capen Reynolds Award. She worked as policy analyst for Kentucky Youth Advocates and the Kentucky Mental Health Coalition. She also served as Director for Kentucky Jobs with Justice. She attended the Brandeis School of Law in 2003-04 and was a law clerk in the LaGrange Capital Post-Conviction Office before being hired as a Mitigation Specialist.

LA MER KYLE-RENO started her career in the Department of Public Advocacy's Paducah Office in 1999, then a staff attorney in the Maysville Trial Office, then an attorney with the Capital Trial Branch, and since December 2004 has been the directing attorney for the Cynthiana office. She is a graduate of the University of Kentucky and the University of Dayton School of Law. She has worked as a Coordinator for Teen Court in Paducah and has worked to create better alternatives for juveniles and Spanish speakers in both Paducah and Maysville.

ERWIN W. (ERNIE) LEWIS grew up in Missouri, the son of a Baptist minister and a school teacher. He has two children, Ben, a first year student at Chase Law School, and Rachel, a freshman at Kenyon College. He resides in Richmond, Kentucky. Ernie received his undergraduate degree from Baylor University in 1969, a Masters of Divinity from Vanderbilt University in 1973, and a *Juris Doctoris* (J.D.) from Washington University in 1977. He has been with the Department of Public Advocacy since he was admitted to the bar in 1977 in several different capacities, including appellate lawyer, local assistance branch manager, directing attorney of the Richmond Trial Office, and Regional Manager for the Central Kentucky Region. Since 1985, he has been on the faculty of the National College of Criminal Defense located at Mercer Law School in Macon, Georgia. He is also on the faculty of the National Defender Leadership Institute. He was named Kentucky Public Advocate by Governor Patton in October of 1996, and again in 2000. He was appointed to a third term by Governor Fletcher in 2004. He has served as a member of the Governor's Task Force on Domestic Violence and Sexual Assault, the Department of Juvenile Justice Advisory Board, the Board of the Kentucky Association of Criminal Defense Lawyers, the Board of the Appalachian Research and Defense Fund, the Governor's Criminal Justice Response Team, the Kentucky Criminal Justice Council, the Kentucky Corrections Commission, the Chair of the Corrections/Committee Based Sanctions Committee of the Criminal Justice Council, the Governor's Drug Summit, and the Lieutenant Governor's Blue Ribbon Commission on Sentencing. He is on the Advisory Board of the International Centre for Healing and the Law in Kalamazoo, Michigan. He has testified on indigent defense issues before Task Forces in Georgia, North Carolina, Texas, and Louisiana. In 2000, he was named Outstanding Lawyer by the Kentucky Bar Association.

MELANIE LOWE is a graduate of Marshall University and the University of Kentucky College of Law. She started with the Department of Public Advocacy in 2000 in the Elizabethtown Office. Since 2003, she has been with the LaGrange Trial Office.

CHARLOTTE MCPHERSON began her career as a part-time pretrial officer in the 29th Judicial District, consisting of Adair, Casey, Cumberland, and Monroe Counties in 1982. She was promoted to supervisor of the 29th District in 1988. She worked in the capacity of a pretrial officer and supervisor in the district for 22 years. In August 2004, Ms. McPherson was promoted to Field Supervisor and has responsibility of supervision over pretrial programs in 12 Judicial Districts consisting of 30 counties in the Commonwealth, as well as, additional duties related to employee supervision on a statewide basis. Ms. McPherson is a graduate of Western Kentucky University with a Bachelor of Arts degree in both Sociology and Journalism.

DON MOREHEAD is a graduate of Austin Peay State University and St. Thomas University School of Law, Miami, FL. He was formerly a staff attorney with the Trial Division in the Murray Office. He currently is with the Appeals Branch.

RICHARD NEAL is a Staff Attorney with the Post-Conviction Branch of the Department of Public Advocacy. He is admitted to practice in the Sixth Circuit Court of Appeals; United States District Court, both Eastern and Western District; Kentucky Supreme Court; Kansas Supreme Court (inactive). A graduate of The University of Kentucky (BA in Psychology, MRC in Rehabilitation Counseling) and Washburn School of Law (Topeka), he has worked for DPA's post-conviction branch since 1999. Prior to his employment at DPA, he worked for two years as an Assistant District Attorney in Wichita, Kansas.

J. DAVID NIEHAUS received his J.D. from the University of Louisville in 1978. After practicing tort defense and insurance law with *Raine, Raine and Highfield*, he joined the Louisville Metro Public Defender as Deputy Appellate Defender in 1983. He has handled appeals, habeas actions, and writs at all levels in Kentucky and federal courts. He argued *Batson v. Kentucky* before the United States Supreme Court. Currently he concentrates on state constitutional issues.

BETTE J. NIEMI graduated from the University of Louisville School of Law in 1976. From 1978 through 1990 she worked for the Department of Public Advocacy in various positions including Directing Attorney of the LaGrange Trial Office and Regional Supervisor of DPA's Western Kentucky Trial Offices. Bette was employed by the Jefferson District Public Defender's Office between 1994 and 1999 and served as Chief of its Capital Trial Division. Bette returned to DPA in September 1999 as Capital Trial Branch Manager. She is a 1982 graduate of the National Criminal Defense College's Trial Practice Institute, Charter Board Member and Past-President of the Kentucky Association of Criminal Defense Lawyers, and former Chairperson of the Criminal Law Section of the Kentucky Bar Association. Bette was the 2004 recipient of the Department of Public Advocacy's *Furman Award* recognizing her efforts on behalf of capital clients.

GEORGE R. NICHOLS, II, M.D., a native of Louisville, became the first Chief Medical Examiner of the Commonwealth of Kentucky, and its first practicing forensic pathologist in 1977. During his twenty year tenure as the Chief Medical Examiner, Dr. Nichols built a death investigation system which is a model for states with a large non-urban land mass and low population densities. Dr. Nichols also practices clinical pathology, anatomic pathology, and cytopathology. As Clinical Professor of Pediatrics and Pathology, Dr. Nichols serves as the Section Chief of Clinical Forensic Medicine, directing forensic physicians and nurses in performing independent analysis of causation of injuries in living patients from 1995-2002. This program is the first of its kind in the United States. Dr. Nichols has performed 10,000 post mortem examinations and has supervised another 30,000 autopsies. He has given medical expert testimony on multiple subjects in federal and many state courts. He has received numerous awards including the Annual Distinguished Alumnus of the University of Louisville, School of Medicine. In 1997, he founded a consulting firm, Commonwealth Medical Legal Services.

JOHN PALOMBI is a 1983 graduate of Oberlin College and a 1987 graduate of DePaul College of Law. He has been a licensed attorney since 1987, practicing in Illinois until moving to Kentucky in 1997. He has served as a staff attorney for an appellate court, was a commercial litigation associate at a Chicago law firm, was an assistant appellate defender for the Office of the State Appellate Defender in Springfield, Illinois, and has also worked as an attorney for the Illinois Department of Insurance.

MIKE PARKS, CCDI, CFEI, CFII, is currently employed with the Dept. of Public Advocacy as a criminal investigator. His past and present activities / investigations of various types include major to minor criminal cases, arson, personal injury, automotive accidents, clandestine employee surveillance and evaluations. For 7 years he was a deputy sheriff. He has been a firefighter since 1971 and is at present an active Arson Investigator / Training Instructor / Firefighter for the West Knox Volunteer Fire-Rescue in Corbin, Ky., Arson Investigator / Training Officer / Firefighter for the Woodbine Volunteer Fire-Rescue, Woodbine, Ky.. Mike is a member of the International Association of Arson Investigators and the National Association of Fire Investigators. He is certified by the National Association of Fire Investigators as: Certified Fire and Explosion Investigator (CFEI) and Certified Fire Investigation Instructor (CFII), Recognized and testified in Knox county circuit court Arson trial (March 10, 2005) as an Expert Witness / Fire Investigator. IFSAC (International Fire Service Accreditation Congress), Certified Firefighter I & II, IFSAC Certified Hazardous Materials Awareness and Operations levels, IFSAC Certified Fire Service Instructor. Kentucky Fire Commission Certified Firefighter, & level I Ky. Certified Fire Service Instructor. Mike works part-time for the Ky. Fire Commission / KCTCS (Ky. Community Technical College System), traveling to various Fire Departments, and State Fire Schools, at night and on weekends, as an Instructor teaching Firefighters skills to keep them safe and to better serve their communities. He has received Weapons of Mass Destruction, Bombing & Terrorism, and Methamphetamine training by various agencies, actively teaches Firefighter safety classes related to Methamphetamines, and has hundreds of hours training and instructing in the fire and rescue service. Mike was certified by the Criminal Defense Investigation Training Council as Board Certified Criminal Defense Investigator (CCDI) October 2001, and presented a Meritorious Service Award in August 2002 by the CDITC. One of the recipients of the DPA Furman award in June 2003 as a member of the Osborne defense team. Mike is also a Carry Concealed Deadly Weapons Instructor for Kentucky.

ROBERT T. PASCHALL, MD, FAAP, serves as the medical director of the Child Protection Program at St. Louis Children's Hospital. The Child Protection Program provides multidisciplinary evaluations for children presenting to the hospital for physical abuse, sexual abuse, and neglect assessments. As assistant professor of pediatrics at Washington University School of Medicine in St. Louis, Dr. Paschall teaches classes on child maltreatment to medical students. In addition, he serves as preceptor for the Child Protection and Forensic Pediatrics fellowship at Children's Hospital and coordinates an international health elective for medical students and pediatric residents. He serves on the St. Louis City Child Fatality Review Panel. As a member of the advisory council for the Missouri SAFE-CARE Network, Dr. Paschall, with board members, advises the Missouri Department of Health and Senior Services on issues related to child maltreatment.

DAMON PRESTON is a full-time baseball fan who happens to spend his days working as the Appeals Branch Manager for the Department of Public Advocacy. After attending Red Sox games while at Harvard Law School, Damon split his time between the Yankees and Mets when he was at the Criminal Appeals Bureau of the Legal Aid Society in New York City. Since returning to Reds country in 1997, Damon has worked in the Richmond DPA trial office and directed the Paducah and Harrison DPA trial offices before joining Appeals in December 2004. He lives in Georgetown (conveniently an hour from Great American Ballpark) with his wife Amy and daughters Abbie and Marissa.

DIANA QUEEN is an investigator for the Department of Public Advocacy serving with *The Kentucky Innocence Project*. Prior to her role in the *Kentucky Innocence Project* she worked with the Capital Trial Branch, and Post Conviction Branch investigating death penalty cases. Diana is a board certified criminal defense investigator. She is a National Advisory Board Member for the CDITC, the National Innocence Project National Advisory Council Member, and is on the 2004-2005 DPA Defender Council. In 2004, Diana received the National Investigator/Philosophers Award, for outstanding contributions to National Criminal Defense education and training. Diana has received the distinguished *Rosa Parks Award* in 2004, for her exemplary service to the poor. She serves in volunteer positions in her community and is a member of the Woodford County Human Rights Commission. Diana serves on the executive committee for *Francisco's Farm* Invitational Fine Art and Craft Show, and a member of the Midway Woman's Club. She is a graduate of Midway College, the Kentucky State Police Academy, and holds specialized certifications from the FBI and DEA. Diana is currently pursuing a post bacularette degree in Public Policy and Administration. During her time with the Kentucky State Police, she served as a trooper and detective and worked special investigations. Diana has approximately 15 years of experience in law enforcement and related fields of Criminal Justice.

SUSAN REALE was born in Louisville, KY and graduated from Davidson College, in Davidson, N.C., with a B.A. *Cum Laude* in English. She spent her entire junior year on a Davidson study abroad program in Wuerzburg, Germany, where she lived in an international dorm, was enrolled in the University of Wuerzburg and took all her classes in German. After graduating from college, she spent a year in Hokota, Japan teaching English to Japanese junior high school students. She was the only Caucasian in her town. After her experiences in Japan, Susan traveled for six months with a friend around the world to such places as New Zealand, Australia, Bali, and Java in Indonesia, Korea, Thailand, Vietnam, Singapore, Japan, and then to Greece, Italy, Germany, and the U.K., before returning to the States. Susan then immediately enrolled in law school at the University of Kentucky, and received her J.D. in 1999. She was recruited by Bass, Berry & Sims, a large, full-service firm in Nashville, where she practiced law for two years in the Commercial Litigation section. She joined Thomson West as a Government Account Representative in April 2001, and was promoted in January 2003 to a Government Account Manager. She used to reside in Nashville until May of 2005, when she and her husband relocated to Louisville. She manages and trains the Westlaw government accounts in both Tennessee and Kentucky. Susan married in October 2003 and that is when her name changed from Beale to Reale!

ROB RILEY joined the Department as a trial attorney in 1982, after graduating from the University of Tennessee. He previously served the Department as the field services director and is now the Northern Regional Trial Manager as well as the Directing Attorney of the LaGrange Trial Office. He has served on the Board of Directors of KACDL. Rob participates extensively in training, having been a frequent seminar lecturer and has been a TPI faculty member. Rob serves as a departmental resource on issues involving DUI and is the editor of the *DUI Trial Practice Manual* published by DPA and updated yearly. Rob argued *Commonwealth v. Raines* and *Commonwealth v. Wirth*, both DUI decisions before the Kentucky Supreme Court.

GAIL ROBINSON is a 1972 graduate of Vanderbilt University and a 1976 graduate of the University of Louisville Law School. She was with the Department of Public Advocacy from 1975 until 1986 in a variety of positions, in private practice from 1988 until 1997. From 1997 to 2001, she was manager of DPA's Juvenile Post-Dispositional Branch. Since 2001, she has been a member of that Branch handling appeals with focus on several juvenile death penalty cases. Gail was a high school teacher and social worker prior to attending law school. She was also a member of Franklin County Board of Education for nearly seven years.

MEREDITH ROBINSON is the Marketing Support Manager for Kentucky Higher Education Assistance Authority (KHEAA) and The Student Loan People. She has been with The Student Loan People for seven years and has over 20 years of marketing experience. In her capacity with KHEAA and The Student Loan People she is responsible for providing marketing materials, advertising, special projects and support to both agencies. Ms. Robinson is a graduate of Southwestern Missouri State University in Springfield MO.

DR. SUNWOLF has been fascinated with juries and their strange customs since her first jury trial, in 1975. A veteran of many roles within the American justice system (law school clinical education faculty, civil litigation attorney, Training Director for Colorado's Public Defender System, trial consultant)—a moment of epiphany during a death penalty trial pushed her back to graduate school, where she completed both a Master's and Doctoral degree in Interpersonal and Group Communication

from the University of California. Dr. Sunwolf is now an Associate Professor of Communication at Santa Clara University, California, where she teaches interpersonal relationships, group dynamics, conflicts, persuasion, and oral storytelling; she will be a Visiting Professor at SCU's School of Law this fall, originating a new course on Jury Law. She is a faculty member at the National Criminal Defense College and teaches at death penalty colleges and continuing legal education programs throughout the country. She completed post doctoral work in counseling psychology. Her award-winning research examines the dynamics of what really happens inside jury rooms. She is the originator of Decisional Regret Theory, which explains how jurors attempt to reduce the anxiety of anticipated verdict-regret by telling one another counterfactual stories about the trial. Translating social science research into innovative strategies for trial lawyers, her new book, *Practical Jury Dynamics* (LexisNexis), offers a first look at juror cliques, evidence anxiety, decisional regret theory, invisible jurors, and the deliberation *myth*. Her current research examines emotions during deliberative argument, including the use of humor, teasing, anger, embarrassment, fear, and frustration. Living at the enchanted edge of an Ivory Tower, Sunwolf continues to consider the possibilities of storytelling, group behaviors, and the rearrangement of social realities (WHAT-MIGHT-YET-BE).

MARGUERITE THOMAS joined DPA in 1979 as a paralegal and then transferred to Kentucky State Reformatory Post-Conviction office where she worked as paralegal for 4 years. After graduating from the U of L Law School in 1985 she returned to DPA in Frankfort as an attorney with the Post-Trial Services Branch. She has been manager of DPA's Post-Conviction Branch since 1995. In 1996, she headed the successful effort to obtain clemency and/or parole for 12 KCIW inmates who were victims of domestic violence. During the past three years, she has been instrumental in the creation and development of the Kentucky Innocence Project. KIP is a cooperative effort with state universities and law schools to obtain the release of innocent persons incarcerated in Kentucky.

ROBERT WALKER, M.S.W., L.C.S.W., is Assistant Professor of Psychiatry at the University of Kentucky Center on Drug and Alcohol Research with conjoint appointments in Social Work and Behavioral Science. He received his M.S.W. degree from the University of Kentucky and was the Center Director of community mental health center for 20 years. He has over 25 years experience as a clinician and clinical supervisor and has overseen clinical services for substance abuse and programs for offenders. He has been a co-investigator on partner violence studies in rural and urban areas and has been an evaluator of substance abuse treatment programs in rural and inner city programs. Mr. Walker is the principal investigator of a state-mandated substance abuse treatment outcome study. He has taught psychopathology, social work interventions with family problems, and research design and implementation in the graduate program in the College of Social Work at the University of Kentucky for 16 years. He serves as a board member on the Kentucky Brain Injury Trust Fund, a funding source for persons with brain injuries. He has published articles on substance abuse, brain injury, domestic violence, ethics, and personality disorders.

B. SCOTT WEST — Directing Attorney for Murray Field Office; Married to Beverley and father to Hannah, 7. Scott hails from Eastern Kentucky but was transplanted in Western Kentucky in 2001. A graduate of the University of Kentucky Law School (1988), and Vanderbilt University (1985), Scott practiced for ten years at Texaco Inc., in Houston, Texas, before joining DPA in 1999.

CHRIS WOODALL is a 1996 graduate of the University of Kentucky College of Law. He has been with DPA for five years sandwiched around a one year stint in private practice. He is a trial lawyer with the Hopkinsville office and currently works in Christian Circuit Court.

VINCE YUSTAS is a graduate of Seton Hall University and Rutgers School of Law. Following a short private practice in Northern New Jersey, he served more than 20 years in the United States Army as an armor officer and a judge advocate. This service included being a member of the Criminal Law faculty of the Judge Advocate General's School. Since 1991, Vince has been a Kentucky attorney and has been associated with DPA since 1994, first as a contract defender then full-time starting in 1997. Vince served as the manager of the Capital Trial Branch then became the first Western Region Capital Conflict Counsel. In 2001, he was honored as the KACDL Defense Counsel of the Year. Vince and Mary Nell reside in Brandenburg, Kentucky.

WILL M. ZEVELY is a 1972 graduate of Chase Law School and a partner in the Florence, Kentucky law firm of *Busald, Funk and Zevely*. From 1972-83 he served as the Boone and Gallatin public defender. He has literally tried hundreds of DUI cases since 1972. He is one of the preeminent DUI litigators in Kentucky, presenting to a variety of Kentucky groups on DUI including KATA, KBA, KACDL, and many local Bars. He has an undergraduate degree in chemistry which gives him an extra edge in the intricacies of the breathalyzer. As a member of the Ohio Bar, he has practiced regularly under Ohio's *per se* law. He is a charter board member of KACDL and writes a regular CUI column for their newsletter. He has co-authored, *Kentucky Driving Under the Influence Law* with District Judge Stan Billingsley, the only complete analysis of Kentucky's DUI law. ■

KENTUCKY PUBLIC ADVOCACY'S 2005 AWARD RECIPIENTS

GIDEON AWARD: TRUMPETING COUNSEL FOR KENTUCKY'S POOR

In celebration of the 30th Anniversary of the U.S. Supreme Court's landmark decision in *Gideon v. Wainwright*, 372 U.S. 335 (1963), the *Gideon* Award was established in 1993. It is presented at the Annual Conference to a person who has demonstrated extraordinary commitment to equal justice and who has courageously advanced the *right to counsel* for the poor in Kentucky. Clarence Earl Gideon was denied counsel and was convicted. After his hand-written petition to the U.S. Supreme Court, he was acquitted upon retrial where he was represented by counsel.

- 1993 **J. VINCENT APRILE, II**, DPA acting General Counsel
- 1994 **DANIEL T. GOYETTE**, Executive Director/Chief Public Defender, and the Louisville-Jefferson County Public Defender's Office
- 1995 **LARRY H. MARSHALL**, Assistant Public Advocate in DPA's Appellate Branch
- 1996 **JIM COX**, Directing Attorney, DPA's Somerset Office
- 1997 **ALLISON CONNELLY**, Assistant Clinical Professor, UK, former Public Advocate
- 1998 **EDWARD C. MONAHAN**, Deputy Public Advocate
- 1999 **GEORGE SORNBERGER**, DPA Trial Division Director
- 2000 **JOHN P. NILAND**, former DPA Central Regional Manager
- 2001 **ANN BAILEY SMITH**, Chief of Adult Trial Division, Louisville-Jefferson County Public Defender's Office
- 2002 **TERESA WHITAKER**, Directing Attorney, Columbia Office
- 2003 **ROB SEXTON**, DPA Owensboro Directing Attorney
- 2004 **MARGARET CASE**, DPA Appeals Branch Manager
- 2005 **JAY LAMBERT**, Chief of Capital Trial Division, Louisville Metro Public Defender's Office

ROSA PARKS AWARD: FOR ADVOCACY FOR THE POOR

Established in 1995, the *Rosa Parks* Award is presented at the Annual DPA Public Defender Conference to the non-attorney who has galvanized other people into action through their dedication, service, sacrifice and commitment to the poor. After Rosa Parks was convicted of violating the Alabama bus segregation law, Martin Luther King said, "I want it to be known that we're going to work with grim and bold determination to gain justice... And we are not wrong.... If we are wrong justice is a lie. And we are determined...to work and fight until justice runs down like water and righteousness like a mighty stream."

- 1995 **CRIS BROWN**, Paralegal, DPA's Capital Trial Branch
- 1996 **TINA MEADOWS**, Executive Secretary to Deputy, DPA's Education & Development
- 1997 **BILL CURTIS**, Research Analyst, DPA's Law Operations Division
- 1998 **PATRICK D. DELAHANTY**, Chair, Kentucky Coalition Against the Death Penalty
- 1999 **DAVE STEWART**, Department of Public Advocacy Chief Investigator, Frankfort, KY
- 2000 **JERRY L. SMOTHERS, JR.**, Chief Investigator, Louisville-Jefferson County Public Defender's Office
- 2001 **CINDY LONG**, Investigator, Hopkinsville
- 2002 **PEGGY BRIDGES**, Mitigation Specialist, Paducah
- 2003 **CINDY DOWNS**, Louisville-Jefferson County Public Defender's Office
- 2004 **DIANA QUEEN**, Investigator, Capital Trial Branch
- 2005 **JESSIE LUSCHER**, Administrative Specialist, Post Conviction Branch

NELSON MANDELA LIFETIME ACHIEVEMENT AWARD

Established in 1997 to honor an attorney for a lifetime of dedicated services and outstanding achievements in providing, supporting, and leading in a systematic way the increase in the right to counsel for Kentucky indigent criminal defendants. Nelson Mandela was the recipient of the 1993 Nobel Peace Prize, President of the African National Congress and head of the Anti-Apartheid movement. His life is an epic of struggle, setback, renewal hope and triumph with a quarter century of it behind bars. His autobiography ended, "I have walked the long road to freedom. I have tried not to falter; I have made missteps along the way. But I have discovered the secret that after climbing a great hill, one only finds that there are many more hills to climb... I can rest only for a moment, for with freedom come responsibilities, and I dare not linger, for my long walk is not yet ended."

- 1997 **ROBERT W. CARRAN**, Attorney, Covington, KY, former Kenton County Public Defender Administrator
1998 **COL. PAUL G. TOBIN**, former Director of the Louisville-Jefferson County Public Defender's Office
1999 **ROBERT EWALD**, Chair, Public Advocacy Commission; President, Louisville-Jefferson County Public Defender Corp.
2000 **JOHN M. ROSENBERG**, A.R.D.F. Director, Public Advocacy Commission Member
2001 **BILL JOHNSON**, Frankfort Attorney, *Johnson, Judy, True & Guarnieri*, Public Advocacy Commission Member
2002 **JERRY COX**, Attorney, *Clonz & Cox*, Mt. Vernon, Kentucky
2003 **DAVE NORAT**, Director, Law Operations Division
2004 **W. ROBERT LOTZ**, Attorney, Covington
2005 **SENATOR GERALD A. NEAL**

IN RE GAULT AWARD: FOR JUVENILE ADVOCACY

This Award honors the person who has advanced the quality of representation for juvenile defenders in Kentucky. It was established in 2000 by Public Advocate, Ernie Lewis and carries the name of the 1967 U.S. Supreme Court case that held a juvenile has the right to notice of charges, counsel, confrontation and cross-examination of witnesses and to the privilege against self-incrimination.

- 1998 **KIM BROOKS**, Director, N. Ky. *Children's Law Center, Inc.*
1999 **PETER L. SCHULER**, Chief of the Juvenile Division, Louisville-Jefferson County Public Defender's Office
2000 **REBECCA B. DiLORETO**, Post-Trial Division Director
2001 **GAIL ROBINSON**, Juvenile Post-Disposition Branch Manager
2002 **PATTI ECHSNER**, Deputy Chief of the Juvenile Division, Louisville-Jefferson County Public Defender's Office
2003 **RAMONA BOWLING**, Juvenile Staff Attorney, Fayette County Legal Aid
2004 **TRACI HANCOCK**, Assistant Public Advocate, DPA Pikeville
2005 **TOM GRIFFITHS**, Maysville Directing Attorney

PROFESSIONALISM & EXCELLENCE AWARD

The *Professionalism & Excellence Award* began in 1999. The President-Elect of the KBA selects the recipient from nominations. The criteria is the person who best emulates Professionalism & Excellence as defined by the 1998 Public Advocate's Workgroup on Professionalism & Excellence: prepared and knowledgeable, respectful and trustworthy, supportive and collaborative. The person celebrates individual talents and skills, and works to insure; high quality representation of clients, and takes responsibility for their sphere of influence and exhibits the essential characteristics of professional excellence.

- 1999 **LEO G. SMITH**, Deputy Chief Public Defender, Louisville-Jefferson County Public Defender's Office
2000 **TOM GLOVER**, DPA Western Regional Manager
2001 **DONALD J. MEIER**, Chief of Adult Trial Division, Louisville-Jefferson County Public Defender's Office
2002 **ERNIE LEWIS**, Public Advocate, Department of Public Advocacy
2003 **ANDREA BRIMM**, Administrative Specialist, Elizabethtown
2004 **FRANK W. HEFT, JR.**, Chief Appellate Defender, Louisville Metro Public Defender's Office
2005 **ROB RILEY**, Northern Regional Manager and LaGrange Trial Office Directing Attorney

ANTHONY LEWIS MEDIA AWARD:

Established in 1999, this Award recognizes in the name of the *New York Times* Pulitzer Prize columnist and author of *Gideon's Trumpet* (1964), the media's informing or editorializing on the crucial role public defenders play in providing counsel to insure there is fair process which provides reliable results that the public can have confidence in. **Anthony Lewis**, himself, has selected two recipients to receive the Award named in his honor in its first year, 1999:

- 1999 **JACK BRAMMER**, *Lexington Herald Leader*, March 5, 1999 article, "The Case of Skimpy Salaries: Lawyers for poor make little in Ky." AND **DAVID HAWPE**, Editorial Director, and *The Courier Journal* for their history of coverage of counsel for indigent accused and convicted issues from funding to the death penalty.
2000 **ROBERT ASHLEY**, Editor, *The Owensboro Messenger*
2001 **JOEL PETT**, Editorial Cartoonist, *Lexington Herald-Leader*
2002 **SARA SHIPLEY AND JIM ADAMS**, *The Courier Journal*
2003 **DEB YETTER**, *The Courier Journal*
2004 **LOUISE TAYLOR**, *Lexington Herald-Leader*
2005 **SHAWN HOPKINS**, *Appalachian News Express*, and **ANNE THROWER**, *Paducah Sun*

FURMAN CAPITAL AWARD

Established in 2000 by Public Advocate Ernie Lewis, it honors the person who has exhibited outstanding achievements on behalf of capital clients either through litigation or other advocacy. William Henry Furman's name appears in the landmark decision, *Furman v. Georgia*, 408 US 346 (1972) which abolished capital punishment in the nation for four years. Furman was a 26 year old African-American who had mental limitations and who finished the 6th grade. Today, Furman lives and works in Macon, Ga.

- 2000 **STEPHEN B. BRIGHT**, Director for the Southern Center for Human Rights, Atlanta, Georgia
- 2001 **MARK OLIVE**, Attorney, Tallahassee, Florida, Habeas Assistance and Training Counselor
- 2002 **KEVIN McNALLY**, Attorney, *McNally & O'Donnell*, Frankfort, KY
- 2003 **THE LARRY OSBORNE TRIAL DEFENSE TEAM: GAIL ROBINSON, JIM NORRIS, TIM ARNOLD, ROGER GIBBS, DENNIS BURKE, MIKE PARKS, CATHY BOWMAN, AND ROBIN WILDER**
- 2004 **BETTE NIEMI**, DPA Capital Trial Branch Manager
- 2005 **THE JUVENILE DEATH PENALTY EFFORT**

PUBLIC ADVOCATE'S AWARD

Each year the Public Advocate presents special awards to recognize those who have uncommonly fostered fair and reliable process for those accused of or convicted of a crime. This award began in 1997 by Public Advocate Ernie Lewis.

- 1997 **DAVID RICHART**, Executive Director, Kentucky Youth Advocates; **LAURA DOUGLAS**, Secretary, Public Protection and Regulation Cabinet; **Lee Norton**, Ph.D., Capital Mitigation Specialist
- 1998 **CHIEF JUSTICE ROBERT F. STEPHENS, SENATOR GERALD NEAL, SENATOR ERNESTO SCORSONE, REPRESENTATIVE JESSE CRENSHAW, REPRESENTATIVE KATHY STEIN, REPRESENTATIVE HARRY MOBERLY, JANE CHILES, Lexington Herald-Leader Editorial Board**
- 1999 **THE BLUE RIBBON GROUP MEMBERS**
- 2000 **REPRESENTATIVE JIM WAYNE, REPRESENTATIVE ROYCE ADAMS, SENATOR DAN KELLY, REPRESENTATIVE ELEANOR JORDAN, REPRESENTATIVE CHARLES SILAR, SECRETARY RON MCCLOUD, WILLIAM R. JONES, STEVE RENCH**
- 2001 **CHIEF JUSTICE JOSEPH LAMBERT, UK Law & Public Advocacy Commission Member Professor ROBERTA HARDING, Justice Cabinet staff: ROBERT F. STEPHENS, SECRETARY, BARBARA JONES, GENERAL COUNSEL, AND KIM ALLEN, SENATOR GERALD NEAL, REPRESENTATIVE JESSE CRENSHAW, SENATOR RICHIE SANDERS, SENATOR BOB JACKSON, BOB SPANGENBERG of The Spangenberg Group**
- 2002 **REPRESENTATIVE ROB WILKEY AND REPRESENTATIVE JEFF HOOVER**
- 2003 **Award Not Given**
- 2004 **KING ALEXANDER**, President, Murray State University, and **KERN ALEXANDER**, Former President, Murray State University, for their partnership with DPA's KIP program
- 2005 **SENATOR CHARLIE BORDERS and REPRESENTATIVE JESSE CRENSHAW**, for their work on the budget. And, **JIM JACKSON and DEAN ALLAN W. VESTAL** for their work on loan forgiveness.

ROBERT F. STEPHENS AWARD

Established in 2002, this award is given to honor those in Kentucky who have worked to significantly improve Kentucky's indigent defense system.

- 2002 **KATHY STEIN** for her sponsorship of KRS Chapter 31 revision bill, support for the *Blue Ribbon Group*, sponsoring DPA Legislation and historic support for adequate funding for public defense.
- 2003 **CICELY LAMBERT, MELINDA WHEELER, and ED CROCKET** for their AOC/DPA Workgroup Leadership
- 2004 **GEORGE MOORE**, Commonwealth Attorney, Mt. Sterling, for his work on Loan Assistance for prosecutors, defenders, and legal service attorneys
- 2005 **AWARD NOT GIVEN** ■

Ours is a government of laws, not men, John Adams said. American society is founded on the commitment to law, binding the rulers as it does the ruled. Our willingness to assure the least among us the guiding hand of counsel is a test of our American faith.

—Anthony Lewis, from the Foreword to *Gideon's Broken Promise* (December 2004)

CRIMINAL JUSTICE LEGISLATION

2005 GENERAL ASSEMBLY

by Ernie Lewis

The 2005 General Assembly met for only 29 days. However, as has been stated numerous times, it was a historic and fruitful 29 days. Included in the accomplishments in this session, in addition to tax reform, were the following pieces of criminal justice legislation. These bills all take effect on June 20, 2005, unless an emergency clause was connected to the bill.

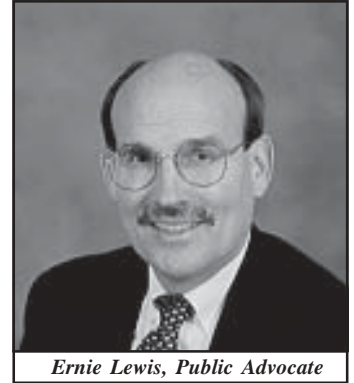
Methamphetamine Bill Senate Bill 63

The most significant criminal law passed by the General Assembly was Senate Bill 63. In the 2004 General Assembly, numerous proposals were made in response to *Kotilla v. Commonwealth*, 114 S.W. 3d 226 (Ky. 2003), which had arguably raised the requirements for a successful prosecution of manufacturing methamphetamine. At the 2005 General Assembly, the Governor and Lieutenant Governor made the passing of a methamphetamine bill a high priority. Numerous proposals were considered from previous sessions, resulting in Senate Bill 63. It includes the following provisions:

- ◆ A new crime of "trafficking in or transferring a dietary supplement" is created. Trafficking in a dietary supplement is a Class A misdemeanor for a first offense, and a Class D felony for a second offense. Excluded from the application of the statute are "practitioners" and pharmacists, although they are prohibited from prescribing dietary supplements containing ephedrine alkaloids "for purposes of weight loss, body building, or athletic performance enhancement."
- ◆ A new crime of "controlled substance endangerment to a child" in the first, second, third, and fourth degree is created as part of KRS 218A. The essence of this crime is that a person "knowingly causes or permits a child to be present when any person is illegally manufacturing a controlled substance or methamphetamine or possesses a hazardous chemical substance with intent to illegally manufacture a controlled substance or methamphetamine under circumstances that place a child in danger of serious physical injury or death..." The four degrees carry different injury levels. Controlled substance endangerment in the first degree is a Class A felony and requires a finding that the child dies "as a result of the commission of the offense." Second degree controlled substance endangerment requires a finding that the child "receives serious physical injury as a result of the commission of the offense." It is a Class B felony. Third degree con-

trolled substance endangerment requires a finding of a physical injury to the child, and is a Class C felony. Fourth degree controlled substance endangerment is a Class D felony, and carries with it no injury requirement.

- ◆ The part of the bill that is new from past proposals consists of significant restrictions on the sale of ephedrine, pseudoephedrine, or phenylpropanolamine. An exception to these restrictions occurs when the product is in liquid or gel capsule form. The restricted products may be sold only by registered pharmacists, pharmacy interns, or pharmacy technicians. When the products are purchased, the buyer must show an ID with the date of birth, and sign a log with the date of the sale, the name, date of birth, and address of the buyer, and the amount of the purchased item. The log is maintained by the business, and must be kept for two years. The log is "subject to random and warrantless inspection by city, county, or state law enforcement officers." If the pharmacist intentionally fails to keep the log she is subject to a \$1000 fine. A person may buy only 9 grams of the product every 30 days, unless the person has a prescription. A person may buy only 3 packages of the product at any one time. A person must be 18 years of age to buy the product.
- ◆ The definition section to KRS 218A.010 is amended in several ways. The "intent to manufacture" is defined as "evidence which demonstrates a person's conscious objective to manufacture a controlled substance or methamphetamine," "Evidence can include "statements, a chemical substance's usage, quantity, manner of storage, or proximity to other chemical substances or equipment used to manufacture a controlled substance or methamphetamine."
- ◆ The statute addresses the *Kotila* issue directly by redefining manufacturing methamphetamine. This is a major change. Under the bill, one can be guilty of manufacturing methamphetamine by either manufacturing methamphetamine or by possessing two or more chemicals or two or more items of equipment for the manufacturing of methamphetamine.



Ernie Lewis, Public Advocate

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- ◆ The crime of unlawful possession of a methamphetamine precursor under KRS 218A.1437 is amended to treat the possession of more than 9 grams of ephedrine, pseudoephedrine, or phenylpropanolamine within a 30 day period as prima facie evidence of intent.
- ◆ A person who either intentionally or recklessly transfers a methamphetamine precursor is also “liable for damages in a civil action for all damages, whether directly or indirectly caused by the sale or trafficking or transfer of the drug product or drug products.” A lawsuit for damages may be brought by the Attorney General, a Justice and Public Safety Cabinet attorney, or by the Commonwealth’s Attorney where the damages occurred.
- ◆ A new series of crimes are established in the bill related to the sale of drugs over the internet. If a person or pharmacy not licensed in the practice of pharmacy uses the internet to either fill a prescription for another person or to deliver a controlled substance or counterfeit controlled substance or prescription drug to another person, he is guilty of a Class C felony. If the substance is a Schedule I controlled substance, or if the substance is the proximate cause of a serious physical injury or death to the other person, the crime becomes a Class B felony. If convicted of the Class B felony, the convicted person may not be granted probation or shock probation. The Attorney General has authority prosecute these crimes in addition to the Commonwealth’s Attorneys.

Assault in the Third Degree Senate Bill 91

This bill arose as a direct result of the killing of Brenda Cowan, a Fayette Urban County firefighter, during an emergency run. The bill is the “Brenda D. Cowan Act.” It extends the provisions of KRS 508.025, assault in the third degree, to “paid or volunteer emergency medical services personnel certified or licensed pursuant to KRS Chapter 311A...a paid or volunteer member of an organized fire department,” and “paid or volunteer rescue squad personnel affiliated with the Division of Emergency Management of the Department of Military Affairs or a local disaster and emergency services organization pursuant to KRS Chapter 39F.” It requires the event to occur “while personnel are performing job-related duties.”

Theft by Deception Senate Bill 96

This bill specifies the kind of notice required under KRS 514.040 to trigger the 30 days in which the maker of the check may “make good” the check. It allows the notice to be “mailed to the address printed or written on the check...” The mailed notice is deemed to have been received 7 days after mailing. “The notice may be sent by first-class mail if supported by an affidavit of service setting out the contents of the notice, the address to which the notice was mailed,

that correct postage was applied, and the date the notice was placed in the United States mail.”

Habitual Truancy House Bill 72

This is a bill that primarily allows for someone to be found to be truant between the ages of 18-21, thereby extending jurisdiction over habitual truants to those 18 years of age and over. Further, the bill allows one to be found to be a habitual truant by being found to be truant twice rather than three times. Students over the age of 18, parents, guardians, custodians, and guardians of exceptional children 18-21 years of age, who violate the truancy laws may be fined from \$100 for the first truancy and \$250 for each subsequent truancy.

Procuring or Promoting the Use of a Minor Senate Bill 106

This bill creates a new section of KRS 510. It makes it unlawful “for any person to knowingly use a communications system, including computers, computer networks, or computer bulletin boards, or any other electronic means for the purpose of procuring or promoting the use of a minor, or a peace officer posing as a minor if the person believes that the peace officer is a minor or is wanton or reckless in that belief...” for the crimes of rape or sodomy in the first or second degrees or unlawful transaction with a minor in the first degree.

Interstate Compact for Juveniles House Bill 46

This bill makes Kentucky a part of the interstate compact for juveniles. Its purpose is to set out how juveniles who have left their state will be treated in a variety of situations. The Compact recognizes that “each state is responsible for the proper supervision or return of juveniles, delinquents and status offenders who are on probation or parole and who have absconded, escaped or run away from supervision and control and in so doing have endangered their own safety and the safety of others.” The Compact also recognizes that “each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence.” The Compact creates an Interstate Commission for Juveniles which oversees the implementation of the Compact. Each state in the Compact must create a State Council for Interstate Juvenile Supervision, the membership of which includes someone from both the Department of Public Advocacy and the Kentucky Association of Criminal Defense Lawyers as well as prosecutors and victims groups. There are thirteen purpose areas, including among the some of the following:

- ◆ Ensuring that adjudicated juveniles and status offenders “are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge...”

- ◆ Ensuring public safety.
- ◆ Returning juveniles who have run away.
- ◆ Overseeing institutionalization of juveniles in need of special services.
- ◆ Providing for the supervision of juveniles.
- ◆ Establishing procedures for moving juveniles from one jurisdiction to another.
- ◆ Establishing procedures to resolve detainers.
- ◆ Collecting data.

Elder Abuse House Bill 298

This bill has also been working its way through various previous sessions of the General Assembly with a variety of permutations. The bill makes a variety of amendments to KRS 209, the protection of adults' chapter, including the following:

- ◆ The purpose section, KRS 209.010, is expanded to including promoting "coordination and efficiency among agencies and entities that have a responsibility to respond to the abuse, neglect, or exploitation of adults."
- ◆ A caretaker who "wantonly or recklessly exploits an adult, resulting in a total loss to the adult of more than \$300 in financial or other resources, or both, is guilty of a Class D felony" at present. KRS 209.990(5). "Exploitation" has been defined in the new bill as "obtaining or using another person's resources, including but not limited to funds, assets, or property, by deception, intimidation, or similar means, with the intent to deprive the person of those resources." "Deception" is defined as "creating or reinforcing a false impression, including a false impression as to law, value, intention, or other state of mind; Preventing another from acquiring information that would affect his or her judgment of a transaction; or Failing to correct a false impression that the deceiver previously created or reinforced, or that the deceiver knows to be influencing another to whom the person stands in a fiduciary or confidential relationship."
- ◆ Amendments are made to the investigations that must be done by the Cabinet for Families and Children when they receive information of exploitation, neglect, or abuse of an adult by their caretaker. The investigation is to include an "assessment of individual and environmental risk and safety factors," "identification of the perpetrator, if possible," and identification by the Office of Inspector General of failures by the institution that contributed to the abuse, neglect, or exploitation. If the investigation reveals that a crime has occurred, the Cabinet "shall immediately notify and document notification to the appropriate law enforcement agency." The Cabinet is charged with coordinating their investigation with that conducted by law enforcement.
- ◆ Each Commonwealth's Attorney and County Attorney's Office "shall have an attorney trained in adult abuse, neglect, and exploitation...if adequate personnel are available." Prosecutors are charged with taking "an active part in interviewing the adult" victim. One prosecutor is charged with handling the case "from inception to completion" if "adequate personnel are available." Prosecutors are charged with "minimi[zing] the involvement of the adult in legal proceedings, avoiding appearances at preliminary hearings, grand jury hearings, and other proceedings..."
- ◆ The Attorney General's Office is required to create a "prosecutor's manual" on prosecuting elder abuse.
- ◆ The bill establishes a variety of education requirements. The Prosecutors Advisory Council is required to develop the program for prosecutors. Each prosecutor and Commonwealth's and County Detective is required to attend a 4-hour program within 6 months of taking office, and a 2-hour update every 5 years. The Kentucky Law Enforcement Council likewise is required to develop a training component for law enforcement basic training. Training for law enforcement must include training on abuse, neglect, exploitation, the dynamics of domestic violence, child physical and sexual abuse, rape, child development, the "effects of abuse and crime on adult and child victims," lethality, profiles of offenders and offender treatment, community resources and reporting requirements, HIV, and the investigation of bias-related crime that is related to "race, color, religion, sex, or national origin." AOC is required to develop education for judges and domestic relations and trial commissioners. Judges are required to be trained every two years in the dynamics of "crimes against the elderly, including but not limited to elder abuse, neglect, and exploitation; the effects of these crimes on the elderly, institutions in which they may reside, and their families," remedies, lethality, financial issues, model protocols, community resources, and reporting requirements.
- ◆ KRS 209A is created "to identify victims of domestic violence, abuse, or neglect inflicted by a spouse, and to provide for the protection of adults who choose to access those services." Victims of domestic violence who have mental or physical disabilities are to be served under KRS Chapter 209. A statutory scheme is created under KRS 209A similar to that of KRS 209 for the investigation and protection of these adults who have been abused or neglected by their spouse.

Parole Board Senate Bill 102

This bill responds to the growth of the inmate population by making changes in how the Parole Board does its business, including the following:

- ◆ A quorum of 4 Parole Board members is created for policy and procedural matters.
- ◆ The bill allows for panels of 2-4 members. 2 members of the Parole Board may make a decision on parole as long

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as they both agree. If they do not agree, the matter is referred to the full board. If a panel consists of 3 members of the Board, 2 of the panel may make a decision. If a panel consists of 4 members, a majority of the panel must agree on the parole decision.

Failing to Maintain Insurance

House Bill 63

This bill separates out the penalty provisions for the operator and the owner of a vehicle being driven without insurance. The owner is subject both to having his motor vehicle registration revoked for 1 year as well as being fined \$500-1000 and/or receiving 90 days in jail. It is frankly unclear to me whether this is a change in the law, or just a clarification. The bill maintains the same penalties for the operator of the motor vehicle, although there is created a special penalty provision for the operator. Where the owner is also the operator, "the person shall be subject to penalties under both" subsections of the bill. The bill also states that a person who has operated a motor vehicle without insurance three or more times within a 5 year period is a "habitual violator."

Mobile Infrared Electronic Transmitter

House Bill 17

This bill makes it unlawful to use a "MIRET", or a mobile infrared electronic transmitter. This is a device that "emits an infrared beam or electronic signal" which "may be used to change the lighting cycle of a traffic control signal." Using a MIRET to change the lighting cycle of a traffic light is a violation with a maximum fine of \$500. If a person is involved in a "motor vehicle collision which involves physical injury" while the defendant is using a MIRET, the person may be found guilty of a Class B misdemeanor. If the person suffers a serious physical injury, the defendant may be found guilty of a Class A misdemeanor. There are some persons who may use legally a MIRET, including the occupant of an emergency vehicle that is responding to an emergency situation, and government workers who are working on traffic control signals.

Transportation Bill

House Bill 133

This bill makes extensive changes to the statutes governing commercial driver's licenses. It makes unlawful a number of acts relating to trains, including the following:

- ◆ Knowingly dropping any object in the path of a railroad rail or track, locomotive, engine, railroad car, or other railroad vehicle.
- ◆ Climbing onto a locomotive, railroad car, or other railroad vehicle while on the track.

- ◆ Disrupting, delaying, or preventing the operation of a train or other railroad vehicle.
- ◆ Knowingly defacing, damaging, obstructing, removing, or impairing the operation of a railroad grade crossing warning signal or other protective device.
- ◆ All of the above are Class A misdemeanors.
- ◆ Where the violation of these laws results in damage to property worth more than \$1000 or creates a "substantial risk of serious physical injury," the violation becomes a Class D felony. If the violation causes physical injury, it becomes a Class C felony. If it causes serious physical injury, the violation becomes a Class B felony.
- ◆ Finally, the acts prohibited in KRS 277.350 relating to going onto railroad property, have been changed from a criminal trespass in the third degree to a criminal trespass in the second degree.

Serving Process

Senate Bill 105

This bill raises from \$10.00 to \$30.00 the cost of serving process or arresting the party in misdemeanor cases.

Budget Bill

House Bill 267

House Bill 267 is the budget bill. Budget bills are an expression of the policy choices made by the Executive and Legislative Branch. In that sense, it is also a bill that expresses criminal justice policies. Here are some of the details of the budget bill that effect criminal justice.

- ◆ The total budget for the Justice and Public Safety Cabinet is \$709,861,000 for FY05 and \$733,018,700 for FY06.
- ◆ Justice Cabinet Administration is funded at \$26,947,200 for FY05 and \$27,836,300 for FY06.
- ◆ \$1.5 million of the Justice Cabinet Administration appropriation goes to the Office of Drug Control Policy for FY05.
- ◆ \$1 million is appropriated from the Justice Cabinet budget for both years for "regional Drug Courts to be established in Kentucky's coal-producing counties."
- ◆ \$500,000 is allocated from the Justice Cabinet budget for "drug and substance abuse education programs."
- ◆ The Justice Cabinet Administration budget also includes \$1 million in FY06 for "drug and substance abuse treatment for nonviolent offenders in local jails."
- ◆ The Office of Drug Control Policy was given \$1.5 million for Operation Unite.
- ◆ Civil legal services is receiving \$1.5 million in each year of the biennium.
- ◆ The Justice Cabinet Office of Investigations is limited to Executive Branch investigations.
- ◆ The Department of Criminal Justice Training is funded at \$41,250,100 for FY05 and \$44,293,800 for FY06. Included in this is \$36.2 million in FY05 and \$39.3 million in FY06 for the Kentucky Law Enforcement Foundation Program Fund.

- ◆ The Department of Juvenile Justice is receiving \$111,619,300 for FY05 and \$110,208,600 for FY06.
- ◆ The Kentucky State Police is receiving \$132,990,200 for FY05 and \$134,848,200 for FY06.
- ◆ Adult Corrections is funded at \$200,130,100 for FY05 and \$207,236,900 for FY06.
- ◆ A new home incarceration statute was made part of budget language, and “shall have permanent effect.” This language states that all Class C and D felons who are serving a sentence at a state-operated prison are eligible “to serve the remainder of his or her sentence outside the walls of the detention facility under terms of home incarceration using an approved monitoring device...” This does not apply to those who have been found guilty of a violent felony, nor to one who has been convicted of a sex crime. This applies only when the inmate has sixty days or less to serve, has participated in a “discharge planning process,” and “has needs that may be adequately met in the community...” A person on home incarceration is viewed as remaining in DOC’s custody, and an “unauthorized departure from the terms of home incarceration may be prosecuted as an escape...”
- ◆ Community Services and Local Facilities for the Department of Corrections is funded at \$89,351,400 for FY05 and \$99,633,100 for FY06.
- ◆ Local jail per diem is increased to \$30.51 per prisoner per day to counties for housing state inmates.
- ◆ Local Jail Support is funded at \$15,276,100 for FY05 and \$16,236,100 for FY06.
- ◆ The Department of Corrections Management is funded at \$41,312,000 for FY05 and \$41,598,900 for FY06.
- ◆ The total budget for the Department of Corrections is \$346,069,600 for FY05 and \$364,705,000 for FY06.
- ◆ The budget for the Department of Vehicle Enforcement is \$17,452,800 for FY05 and \$17,509,600 for FY06.
- ◆ The Department of Public Advocacy budget is \$33,531,800 for FY05 and \$33,617,200 for FY06. This includes the following language: “Included in the above Restricted Funds appropriation is \$830,400 in fiscal year 2004-2005 and \$990,200 in fiscal year 2005-2006 to provide assistance in handling increasing caseloads in public advocacy offices statewide. Any balance remaining at the end of fiscal year 2004-2005 shall not be transferred to the credit of the General Fund, but shall be carried forward into fiscal year 2005-2006 to be utilized for caseload assistance.” This language will allow all \$1.8 million that was added for the biennium to be spent in FY06 and added to DPA’s base budget.
- ◆ There is budget language requiring regional mental health/mental retardation board staff to provide training to new jailers and jail staff on “screening and responding to the needs of inmates with mental illness within six months of employment. Treatment services may also be provided for within this funding allocation.”
- ◆ The Office of the Attorney General is funded at \$25,319,300 for FY05 and \$25,099,800 for FY06.
- ◆ Commonwealth’s Attorneys are receiving \$28,797,300 for FY05 and \$29,795,600 for FY06. This includes \$450,000 in FY06 “to provide assistance in handling increasing caseloads in Commonwealth’s Attorneys’ offices statewide.” There is also \$262,600 in FY06 “for additional staffing resources.”
- ◆ County Attorneys are receiving \$23,409,800 for FY05 and \$24,920,200 for FY06. Included in that is \$450,000 in FY06 “to provide assistance in handling increasing caseloads in County Attorneys’ offices statewide” as well as \$540,000 in FY06 “for additional staffing resources.”
- ◆ The Unified Prosecutorial system is funded at \$52,207,100 in FY05 and \$54,715,800 for FY06.
- ◆ New circuit judges were added to the Tenth, Thirteenth, Twentieth, Twenty-seventh, Eighth, Thirty-eighth, Forty-second, Fifty-third, and Fifty-fifth circuits.
- ◆ New district judges were added to the Eighth, and Sixtieth districts.
- ◆ For FY 05, \$3,900,00 is provided for guardians ad litem; this is increased to \$5,900,000 in FY06.
- ◆ The Board of Claims/Crime Victims’ Compensation Board is receiving \$4,187,400 for FY05 and \$4,209,500 for FY06. Examinations for reported victims of sexual assaults are paid from the Crime Victims’ Compensation Board funds.

Each time a man stands up for an ideal or acts to improve the lot of others or strikes out against injustice, he sends forth a tiny ripple of hope.

— Robert Kennedy

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